

Janis A. Bergstrom

v.

Town of Warren

Docket No.: 12860-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessments on: map 5, lot 42 (Lot 42) \$5,175, consisting of a partially wooded lot; map 8, lot 1 (Lot 1) \$25,380, consisting of a partially wooded lot with small outbuilding; and map 5, lot 61 (Lot 61) \$97,200, consisting of a single-family home. The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

1) an appraisal prepared for Lot 42 and Lot 1 (both lots appraised as one) estimated a \$19,000 May 1990 value;

- 2) an appraisal prepared for Lot 61 estimated a value of \$70,000; and
- 3) Lot 61 is primarily for seasonal use only.

The Town argued the assessments were proper because:

- 1) the same methodology that was used to assess the Taxpayer's properties was used throughout the Town;
- 2) the letter from the state was to apparently settle the estate or probate, and had nothing to do with actual values; and
- 3) all assessments throughout the Town may be high but everyone has been assessed using the same methodology.

Board Findings

Based on the evidence, the board finds the Taxpayer did not prove overassessment. The Taxpayer's main argument focused on the Philbrick letters.

The board, however, was unable to rely upon the letters because the letters were not appraisals and did not include the basis for the value conclusion. Specifically, the letter did not indicate what sales were used or what adjustments were made to the sales to arrive at the value conclusions. Without such information, the board and the municipality are unable to review the soundness of the value conclusions.

Having found the Philbrick letters unpersuasive, the Taxpayer did not present any credible evidence of the Property's fair market value. To carry her burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great

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Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

The Town stated the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This is some evidence of proportionality. See Bedford Development Company v Town of Bedford, 122 N.H. 187, 189-90 (1982).

A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

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Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Janis A. Bergstrom, Taxpayer; and Chairman, Board of Selectmen.

Dated: December 13, 1994

Melanie J. Ekstrom, Deputy Clerk

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