

**Lewis D. Gilmore Jr.**

**v.**

**Town of Rindge**

**Docket No.: 12884-92PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$258,038 (land \$145,938; buildings \$112,100) on a 7.08-acre lot with a dwelling (the Property). The Taxpayer also owns, but did not appeal, another lot in the Town with an \$1,826 current-use assessment. 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 prove the Property was disproportionately assessed.

The Taxpayer argued the assessment was excessive because:

- (1) without a sales study the Town has adjusted the front footage to \$400 based on the fact that a flea market is operated on the Property;
- (2) abutters are not assessed the same as the subject;

- (3) the front footage should be \$300; and
- (4) the assessment should be \$233,050.

The Town argued the assessment was proper because:

- (1) a decision was made in 1992 that since the Property was being used as a commercial property (flea market sales), it should be assessed commercially;
- (2) the Property has access on heavily travelled Rte. 119;
- (3) the Stevens' property has no access on Rte. 119;
- (4) West Rindge Baskets' access is solely off of West Main Street which goes through the West Rindge Village and the traffic is lower;
- (5) commercial properties on Rte. 119 that are in use are assessed at \$400 a front foot; and
- (6) the assessment is proper.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed. The Taxpayer argued that the front footage should be reduced based on the neighbors' assessments. The board finds the Town adequately explained the reasons why the abutters were assessed at a lower front foot value; specifically, their location and access on West Main Street versus the Taxpayer's access on the more heavily travelled Rte. 119 which is 5 miles north of the Massachusetts border. The abutters do not have access on Rte. 119. The Taxpayer argued that one abutter, Mr. Stevens, had legal access on Rte. 119. The board was not presented with any documentation to support this claim; however, the Town argued that Mr. Stevens does not have physical access and therefore was assessed for his access off West Main Street.

The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this 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 assessment generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18. The board finds the Taxpayer's Property was not overassessed. However, there was evidence indicating the Stevens property may have been underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayer's Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayer's assessment because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., id.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing 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 rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Lewis D. Gilmore, Jr., Taxpayer; and Chairman, Selectmen of Rindge; and Ernest Bell, Esquire, counsel for the Town of Rindge.

Dated: January 3, 1996

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Valerie B. Lanigan, Clerk