

Arthur B. Anderson

v.

Town of Bethlehem

Docket No.: 12955-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$39,550 (land \$16,650; buildings \$22,900) on a 2.0-acre lot with a camp (the Property). 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 and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) illegal mobile homes have been moved onto the road and a commercial business has been set up, which are not in character with the neighborhood;
- (2) these homes paid no taxes on their dwellings and the Property should be assessed similarly; and
- (3) the zoning laws in the Town should protect the Property's value.

The Town argued the assessment was proper because:

- (1) the complaint is not an assessment problem but is a legal issue;
 - (2) there were some properties that were underassessed but the assessment has been adjusted;
 - (3) the subdivision is substandard with a private road and the houses are typically seasonal dwellings;
 - (4) one of the mobile homes which the Taxpayer complained of has been removed;
- and
- (5) to the Town's knowledge, Mr. Wilson has never applied to operate a commercial business on his property, although he does park his trucks on his lot.

Board's Rulings

The board's jurisdiction is strictly statutory. Appeal of Town of Sunapee, 126 N.H. 214 (1985). The board can only order an abatement if it finds the appealed assessment is disproportionate relative to market value and the Town's level of assessment. RSA 75:1; Appeal of City of Nashua, 138 N.H. 261 (1994). In this case, the Taxpayer's assessment of \$39,550 indicates a market value of \$27,089, if adjusted by the Town's 1992 equalization ratio of 146% ($\$39,550 \div 1.46$). Thus, for the board to grant an abatement, the Taxpayer needed to make a showing that the Property's value was less than \$27,089.

The board finds the Taxpayer's argument that the nature of the neighborhood devalues his Property is already reflected in the Town's land base rates and adjustments, the grading of the camp, and the depreciation given the camp's replacement cost. Further, the assessment-record cards of

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the neighborhood properties indicate they were consistently assessed and were generally relative to market value based on the few transfers submitted in Town Exhibit A.

The Taxpayer did not submit any market data that showed the character of the neighborhood devalued his Property more than that recognized by the Town. Further, the Taxpayer stated several times he was satisfied with the assessment but that some mobile homes were underassessed. However, the possible 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.

The board understands the Taxpayer's frustration with the apparent lax enforcement of the zoning ordinance; however, as earlier stated, our jurisdiction is limited to determining if that factor, along with all other relevant market factors, was reasonably reflected in the assessment. In this case, we find it was.

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

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Arthur B. Anderson, Taxpayer; and Chairman, Selectmen of Bethlehem.

Dated: November 6, 1995

Valerie B. Lanigan, Clerk

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