

The Margaret C. Kimball Revocable Trust

v.

Town of Hopkinton

Docket No.: 12969-92-PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$215,050 (land, \$58,650; buildings, \$156,400) on a 6.2 acre lot (5.53 assessed in current use and .67 acre site not in current use) with a dwelling and attached garage (the Property). 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 and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

1) the .67 acre site not in current use is overassessed at \$51,000, based on a comparison of other house-sites on Dolly Road;

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2) the .67 acre site does not conform to the Town's minimum zoning lot size;
and

3) the .67 acre house-site sits back 80' from the frontage and part of it overlaps into what the Town had assessed as rear land.

The Town argued the assessment was proper because:

- 1) the land is assessed consistently with other lots on Dolly Road; and
- 2) two sales of property on Dolly Road in 1993 generally support the Town's assessments.

Board's Rulings

We find the Taxpayer failed to prove the Property's assessment was disproportional for the following reasons:

1) The Taxpayer focused its arguments on the portion of the land assessment not in current use. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a Taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The Taxpayer's evidence of market value, an opinion of value of \$237,000 by Ralph J. Cutting, supports the Town's ad valorem assessment of \$247,000, if equalized by the department of revenue administration's 1992 equalization ratio ($\$247,000 \div 1.06 = \$233,000$).;

2) While the Town's assessment of the house site area is different after the

consideration of current use than before, the contributory value of the .67 acre site was not shown to be disproportional; land not in current use should be valued at its highest and best use considering the rights and factors directly

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inherent in the area not in current use. In this case, the .67 acre site includes all the rights and improvements for a house site. Therefore, the .67 acre area should be valued as having all those rights. A review of the Taxpayer's comparable developed lots on Dolly Road, smaller than one acre indicates they were comparably assessed in the mid \$50,000 to mid \$60,000 range. While it is true the .67 acre site could not be transferred separately without the associated land in current use, the vast majority of the value associated with a legally sized lot inclusive of the .67 acre developed house site would be attributed to the .67 acre site.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Warren F. Kimball, Esq., counsel for The Margaret C. Kimball Revocable Trust, Taxpayer; and the Chairman, Board of Selectmen of Hopkinton.

Melanie J. Ekstrom, Deputy Clerk

Date: January 17, 1995

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