

Jean C. and Robert L. Vivian

v.

Town of Sutton

Docket No.: 13023-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$296,650 (land \$189,800; building \$106,850), consisting of a single-family dwelling (the Property). The Taxpayers 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 Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

- 1) the assessment increased more than other assessments in the Town;
- 2) assessments on larger lakefront lots with more lake frontage were assessed less than the Property;

- 3) the Property's lake frontage was calculated at 422 feet, which was an increase from prior calculations; and
- 4) the calculated lake frontage should have been adjusted due to water depth, cove location and other factors.

The Town argued the assessment was proper because:

- 1) Taxpayers' land value was mistakenly appraised in the 1981 revaluation and a recent land survey of Taxpayers' Property revealed 422 feet; therefore an error was corrected;
- 2) Taxpayers' land value was given a 25% reduction due to the shallow cove-type frontage and because further subdivision may not be possible;
- 3) comparables submitted by Taxpayers do, in fact, show consistency and proportionality;
- 4) three comparable sales indicated Taxpayers' assessment was fair; and
- 5) Taxpayers have failed to prove disproportionality.

Board Findings

Based on the evidence, the board finds the Taxpayers did not prove overassessment. The Taxpayers had 3 major flaws in their arguments: 1) they focused only on the land assessment; 2) they unsuccessfully attempted to show how their assessment on the land was disproportional compared to other properties; and 3) they failed to provide any market data. Before providing further detail on these points, the board notes the Town, on the other hand, showed a consistency in their assessment methodology, and more importantly, the Town demonstrated how the assessment was consistent with other lakefront assessments and lakefront sales.

The Taxpayers only presented arguments on the land assessment. In making a decision on value, the board must look 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 Taxpayers did not present any credible evidence of the Property's fair market value as a whole. To carry their burden, the Taxpayers 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 Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

Concerning the assessment increase, increases from past assessments are not evidence that a taxpayer's property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985).

One final note: the assessment was originally \$301,600, but it was apparently reduced to \$296,650. If abatement checks have not been issued based on the \$296,650 figure, they should be.

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

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Jean C. and Robert L. Vivian, Taxpayers; and Chairman, Sutton Board of Selectmen.

Dated: December 13, 1994

Melanie J. Ekstrom, Deputy Clerk