

Elizabeth F. Sinopoli

v.

Town of Barrington

Docket No.: 13141-92-PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$20,800 on Map 5, Lot 64A consisting of 6.01 acres and \$104,900 on Map 5, Lot 78 consisting of 1.38 +/- acres with a seasonable camp (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 proved disproportionality.

The Taxpayer presented numerous arguments concerning the condition of the camp. The Taxpayer's main arguments concerning overassessment were:

- 1) abutters were not assessed by the triangulation method and were assessed less for frontage;

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- 2) the Property was listed with Century 21 for \$17,000, including a right-of-way to the water;
- 3) real estate values have been declining since 1991;
- 4) Lot 64A cannot be subdivided and is very steep and hilly;
- 5) the road is not plowed and there is no fire protection; and
- 5) an appropriate assessment would be \$80,000 on Lot 78 and \$12,000 on Lot 64A.

The Town argued the assessment was proper because:

- 1) waterfront properties were impacted the greatest due to market demand and value shift since the last revaluation was in 1982;
- 2) Taxpayer's concerns on the condition of the camp and Lot 64's terrain were addressed, i.e., condition of the camp, having no beach rights, large topography adjustment;
- 3) a sales analysis (Ex. G) contains sales used to establish the front foot value;
- 4) Taxpayer's assessment was supported by subsequent sales; and
- 6) Taxpayer has failed to present an appraisal or any evidence to support an overassessment and the appeal should be denied.

Board Findings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed.

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

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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. The Taxpayer's waterfront real estate listings are located on inferior lakes and ponds in other towns. Most comparables like the subject are seasonal and are found on smaller lots than the subject. Asking prices as presented from listings and for sale advertisements are of little probative value. Sales of comparable properties on the other hand are very indicative of market value.

The triangulation method employed by the Town is widely recognized in assessing circles and used to assess waterfront value where the rear boundary line significantly exceeds or is less than the shore line frontage. The shape and utility of the lot directly affects its market value. A disproportionate amount of backland or frontage needs to be adjusted.

The 1982 assessment cards provided by the Taxpayer do not establish value or disproportionality. It is well established that waterfront properties have increased in value at a faster rate and further over the past 10 years than they have declined since 1990. Generally, the unit values for area and shore frontage are greater for smaller lots than larger ones. Map 5, Lot 78 was given additional depreciation for lack of a septic system.

The Taxpayer argued there was no fire protection or road plowing. Lack of municipal services is not necessarily evidence of disproportionality. As the basis of assessing property is market value, as defined in RSA 75:1, any effect on value due to lack of municipal services is reflected in the

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selling price of comparables and consequently in the resulting assessment. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

The Taxpayer argued the assessment should be reduced because the market for the property has been declining. Evidence of a declining market alone is not a basis for reducing an assessment no more than evidence of an appreciating market is a valid basis of increasing an assessment. The issue is proportionality. The Taxpayer needs to make a showing that the Property has changed in value to a greater extent than that indicated by the change in the general level of assessment in the Town as a whole to prove her property is disproportionately assessed.

The Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is 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 (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

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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

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Elizabeth F. Sinopoli, Taxpayer; and the Chairman, Selectmen of Barrington.

Dated: May 12, 1995

Melanie J. Ekstrom, Deputy Clerk