

Janet Hensle

v.

Town of Middleton

Docket No.: 13420-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$159,850 (land \$80,400; buildings \$79,450) on a .75-acre lot with a house (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 meet the burden of proof.

The Taxpayer argued the assessment was excessive because:

- (1) a January 21, 1993 appraisal estimated a \$109,000 value;
- (2) the assessment was higher than sales prices of similar properties;
- (3) the Town reduced the 1991 value, then raised the value of the fireplace to

increase the assessment;

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- (4) the Town abated the 1991 taxes but refused to give the refund; and
- (5) the assessment should be \$110,000.

The Town argued the assessment was proper because:

- (1) the Property was assessed consistent with other waterfront lots in the same area;
- (2) Sunrise Lake properties were revalued in 1992 and the values reflected the values established in 1990 when the whole Town was revalued;
- (3) the Taxpayer's appraiser stated the building was larger than the Property was actually assessed for and the department of revenue administration's (DRA) sales analysis included three comparables used by the Taxpayer's appraiser;
- (5) the board of tax and land appeals accepted the values set by DRA for the revaluation and, therefore, the values were accurate;
- (6) the Taxpayer provided no market data to prove overassessment; and
- (7) there was no evidence that the Town abated any tax on the Property in 1991.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the assessment was disproportional. 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). This evidence is especially important in this case where the Town, pursuant to board order, reviewed and revalued all of the waterfront properties. The

board, having reviewed that revaluation and the evidence here, finds the assessment was arrived at based on the best available market data.

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Furthermore, the Town in its brief demonstrated the problems with the Taxpayer's position. The most relevant market data submitted by the Taxpayer was the January 1993 appraisal. However, the assessment date under appeal is April 1, 1992, and the report made no adjustment for that fact. Additionally, the appraisal only used three sales while the Town's revaluation used all confirmed market sales. Additionally, the board was only provided with a one page appraisal, and we do not find this sufficient to overcome the Town's thorough revaluation analysis and analysis connected with this appeal.

The Taxpayer also questioned a \$3,750 assessment reduction that the Town was supposed to provide her in 1991. Unfortunately, because this is a 1992 appeal, the board does not have jurisdiction over that issue. If the Taxpayer has a continuing concern, the Taxpayer should contact the Town directly.

We find the Taxpayer failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

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
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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

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Janet Hensle, Taxpayer; and Chairman, Selectmen of Middleton.

Dated: February 22, 1995

Lynn M. Wheeler, Deputy Clerk

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