

John and Cheryl Pitts

v.

Town of Bradford

Docket No.: 13484-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 adjusted assessment of \$92,400 (land \$65,000; buildings \$27,400) consisting of a seasonal cottage on .73 of an acre (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 granted.

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 carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the Property is accessed by a deeded footpath through several private properties or by boat;

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(2) the Property is only seasonal, lacks town services and does not have a septic system or a well;

(3) a nearby property (Crepeau) sold in July 1993 for \$64,500;

(4) the road to the parking lot is not maintained and is inaccessible 3-4 months a year; and

(5) based on the July 1993 sale, the Property's assessment should be \$67,300.

The Town argued the assessment was proper because:

(1) there was a town-wide revaluation in 1992 and waterfront values were impacted the greatest due to market demand and value shift;

(2) the market has typically shown that island properties require a -50% adjustment; since the Property is not totally surrounded by water and can be accessed by foot year round, a market adjustment of -25% was given due to its lack of road access; the adjustments given to lots on the footpath were different based on their distance from the end of the road;

(3) an older sale on a footpath that occurred in October 1989 for \$90,000 was trended to establish a market adjustment for being on a footpath;

(4) the Taxpayers' comparable sale, which is much smaller than the Property, was not an arm's-length transaction because the seller was motivated to sell; and

(5) five comparable properties on the footpath support the Property's assessment.

Board's Rulings

In arriving at its decision, the board has reviewed all of the Town of Bradford cases that were appealed for the 1992 tax year and the evidence

presented by all parties, Town and Taxpayers. Based on the evidence, the
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board finds the proper assessment to be \$83,450 (land \$56,050; buildings \$27,400).

The Town stated that in arriving at a market adjustment for properties located on a footpath, that market trends for island properties were considered and these trends indicated a -50% market adjustment for island properties. Given the fact that the subject Property is located on a footpath, the Town determined an adjustment of -25% was appropriate. The Town did not submit any analysis for the board to review how its island property adjustment was elicited nor did the Town support its footpath adjustment by any conclusive method.

The Town stated that two sales had occurred on the footpath -- the first sale took place in October 1989 for \$90,000 (Flegal) and the second took place in July 1993 for \$67,800 (Crepeau). The Town argued that the Crepeau sale was not a market sale because the owner had another property on the Cape and therefore was motivated to sell. Many of the Taxpayers stated that the sale had been confirmed with the owner (Taxpayers stated sale price to be \$64,500), that the owner purchased the Cape property prior to buying the property and that it had been purchased as an investment. The board finds that there was no evidence submitted to suggest that this sale was not an arm's-length transaction. In fact, the property had been listed on the market for over a year and a half, was properly advertised, and there was no evidence to suggest that the seller was under duress.

A -1/2% per month time adjustment was used in the Town for trending but the Town "felt" that waterfront properties did not depreciate at the same rate

as other properties in Town. The Town submitted no basis for this feeling.

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The Flegal and Crepeau sales indicate at the very least that properties on the footpath had in fact depreciated in value.

The board finds the market adjustment applied by the Town for the Property was low. The Property not only suffers from lack of direct access but the footpath passes between the owners' building and the lake front and the owners must deal with the intrusion not only of other owners but also outsiders (hikers, mountain bikers, etc.) passing through their Property. Based on all of the evidence presented, the board has determined an adjustment of -35% to the land value is proper.

The Taxpayers argued that the Property lacked adequate town services. The board finds 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 selling price of comparables and consequently in the resulting assessment. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

As stated above, the focus of our inquiry is proportionality, requiring a review of the assessment to determine whether the property is assessed at a higher level than the level generally prevailing. Appeal of Town of Sunapee, 126 N.H. at 219; Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982). There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the Municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

If the taxes have been paid, the amount paid on the value in excess of \$83,450 shall be refunded with interest at six percent per annum from date

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paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1993 and 1994.

Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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. 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

George Twigg, III, Chairman

Michele E. LeBrun, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John and Cheryl Pitts, Taxpayers; and Chairman, Selectmen of Bradford.

Dated: June 22, 1995

Melanie J. Ekstrom, Deputy Clerk

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John and Cheryl Pitts
Docket No.: 13484-92PT

Linda and Robert Jesanis
Docket No.: 13483-92PT

Walter and Wilma Joyner
Docket No.: 13485-92PT

v.

Town of Bradford

ORDER

This order responds to the "Taxpayers" rehearing motion, which is denied. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within 30 days of the board's denial.

Following a thorough review of the evidence submitted in all of the Bradford cases appealed for the 1992 tax year, the board issued its decisions on June 22, 1995. In its rulings, the board found that the "Town" did not support its footpath adjustment by any conclusive method. Further, the board stated there was no evidence to suggest that the Crepeau sale was not an arm's-length transaction. In arriving at its decisions, the board considered both the July 1993 Crepeau sale and the October 1989 Flegal sale. These sales, when time adjusted to the date of assessments, April 1992, gave the

board the basis for its determination that adjustments were warranted to the properties.

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The board did not agree with the Taxpayers that the land adjustments should be -53%. Further, the board did not suggest that island properties should receive the same adjustment as properties on the footpath, nor would it suggest what adjustment would be appropriate for island properties without market evidence to support the adjustment.

The board determined market adjustments were warranted to the land values based on a review of the two sales and the board's experience. However, the board did not receive sufficient evidence to determine if the values of the buildings were appropriate. The Taxpayers would argue that the building values were acceptable; however, 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). Specifically, the Taxpayers did not indicate how the buildings compared to the sales in size, age, condition or any other relevant factors. Further, no photographs were submitted for the board to review. Without this information, the board was unable to make any further conclusions.

In short, the board based its decisions on the best evidence available -

- two sales on the footpath. The Crepeau sale alone would not have been sufficient to carry the Taxpayers' burden. Further, for the board to make further adjustments, a comparison of the sales and the subject properties (land size, frontage, building size, age, condition) would have had to have been provided, preferably with photographs depicting the properties.

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Request for rehearing denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that copies of the foregoing order have this date been mailed, postage prepaid, to John and Cheryl Pitts, and John Pitts as Agent for Linda and Robert Jesanis and Walter and Wilma Joyner, Taxpayers; and Chairman, Board of Selectmen, Town of Bradford.

Dated: August 11, 1995

Valerie B. Lanigan, Clerk

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