

H. Bruce Flegal

v.

Town of Bradford

Docket No.: 13490-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 adjusted assessment of \$85,700 (land \$61,900; buildings \$23,800) on a .44-acre lot with a seasonal cottage (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 granted.

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 carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Property has no heat, toilet or septic and receives no Town services, e.g., mail, trash removal, snow plowing, etc.;

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(2) the Property has limited access, i.e., 3/10th mile walk down a footpath or by boat;

(3) the Property was purchased in September 1989 for \$90,000 and three realtors stated that property values have declined 20-25% between 1989 and 1992; and

(4) a comparable property (Crepeau) assessed \$85,600 sold in July 1993 for \$64,500.

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 Property's assessment was adjusted for the seasonal use and the lack of septic, toilet, heat and basement;

(3) the market has typically shown that island properties require a -50% adjustment; since the subject is not completely 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 adjustment given to lots on the footpath were different based on their distance from the end of the road;

(4) the Taxpayer's 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

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presented by all parties, Town and Taxpayers. Based on the evidence, the board finds the proper assessment to be \$77,500 (land \$53,700; buildings \$23,800).

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 (the subject) 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

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

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 owner's building and the lake front and the owner must deal with the intrusion not only of other owners but also outsiders (hikers, mountain bikers, etc.) passing through his Property. Based on all of the evidence presented, the board has determined an adjustment of -35% to the land value is proper.

The Taxpayer argued that the Property received no town services. 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).

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If the taxes have been paid, the amount paid on the value in excess of \$77,500 shall be refunded with interest at six percent per annum from date 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to H. Bruce Flegal, Taxpayer; and Chairman, Selectmen of Bradford.

Dated: June 22, 1995

Melanie J. Ekstrom, Deputy Clerk

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