

John and Georgina Burt

v.

Town of Barrington

Docket No.: 13592-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$118,800 (land, \$96,000; building, \$22,800) on a .17-acre lot with a summer camp (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 Property borders a right-of-way to the pond, and due to the small size and setback requirements, it is not possible to install a well;
- 2) the Property is on a dirt road with no town services;

- 3) an opinion of value dated June 24, 1993 estimated a fair market value of \$75,000;
- 4) it represented an increase of 410% since the last revaluation and was out-of-line with average property value increases in the state during that period of time;
- 5) two sales used by the Town for the basis of the revaluation were not comparable; and
- 6) in particular, the land value should be reduced.

The Town argued the assessment was proper because:

- 1) during the 1992 reassessment, all sales within the Town were analyzed to determine values, and it was determined that waterfront properties were impacted the greatest due to market demand and value shift over the years;
- 2) a sales analysis and comparable sales indicated the Taxpayers' assessment was consistent with other assessments;
- 3) the Taxpayers' lack of town services was not a basis for an appeal;
- 4) the Taxpayers' opinion of value was not an appraisal and did not provide supporting or conclusive evidence of value; and
- 5) the Taxpayers' comparables were not comparable, i.e., failed to compare similarly developed lots.

Board Findings

Based on the evidence, the board finds the Taxpayers failed to show overassessment.

First, the Taxpayers did not show that bordering the right-of-way and lacking a well affected the Property's value.

Second, the Taxpayers did not show that being on a dirt road without Town services affected the Property's value. 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).

Third, the Taxpayers' value opinion letter was insufficient to carry the Taxpayers' burden. The board was unable to rely upon the opinion letter because it did not include the basis for the value conclusion. Specifically, the letter did not indicate what sales were used or what adjustments were made to the sales to arrive at the value conclusion. Without such information, the board and the municipality are unable to review the soundness of the value conclusion.

Fourth, concerning the assessment increase from the previous assessment, the board notes that increases from past assessments are not evidence that a taxpayer's property was disproportionately assessed compared to that of other properties in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985). Additionally, the Town stated that the reassessment resulted in substantial increases of assessments on lakefront properties because those properties were underassessed before the reassessment.

Finally, concerning the Taxpayers' comparables, we make the following notes:

1) the assessments on the comparables did not provide the board with market information and the Town could have underassessed some of the comparables;

2) the comparables were undeveloped and the Town adjusted the comparables downward by 30% for this factor;

3) the comparables generally had different topography and the Taxpayers did not discuss these differences in their presentation;

4) the comparables were in different locations than the Property -- the Property is located on the pond while the comparables were generally located in coves; and

5) the Town, with other assessment comparables, indicated that the Property's assessment was in line with other developed comparable properties in close proximity to the Property.

We also note that the Town presented the methodology it used to originally set the assessment and that work appears reasonable and based on market data. Additionally, the Town presented recent sales that indicate the assessment was in line with the market.

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

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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

Ignatius MacLellan, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to John and Georgina Burt, Taxpayers; and Chairman, Town of Barrington.

Dated: March 23, 1995

Melanie J. Ekstrom, Deputy Clerk