

Norman and Denise Hassell

v.

Town of Hinsdale

Docket No.: 13789-93-PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$117,900 (land, \$26,100; buildings, \$91,800) on a 1.01-acre lot with a house (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 was purchased in 1988 for \$110,000 and sold in July 1994 for \$95,000;
- (2) an August 1991 appraisal estimated a \$98,000 value;

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(3) comparable properties with the same square footage and lot size had lower assessments than the Property;

(4) the Town assessed properties at greater values than their 1988 sale prices, yet the market was declining;

(5) a neighboring lot with a \$114,500 assessment sold for \$96,000 in 1992; and

(6) the Town failed to assess neighboring lots accurately.

The Town argued the assessment was proper because three comparable properties in the same development supported the Property's assessment.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$106,600.

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). However, the existing assessment process allocates the total value between land value and building value. The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.

This assessment is ordered because:

(1) the Taxpayers' appraisal, as of August 1991, for \$98,000 and the

subsequent sale of the house in June 1994 for \$95,000 are evidence of the Property's market value;

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(2) the Taxpayers submitted further market evidence of an adjoining property (Lance) that sold in August 1992 for \$96,000; if this sale is adjusted for its slightly larger living area and lack of a second bathroom, it provides an indicated market value of the Taxpayers' property of approximately \$98,000 to \$100,000;

(3) the Town failed to submit any sales that support the assessment and did not refute the Taxpayers' appraisal or provide any evidence that the Taxpayers' sale was not reflective of market value;

(4) the equalization ratios for the Town remained constant at 109% in 1991 through 1993 indicating that, while the assessments were approximately 9% above market value, the market in general had not changed significantly during those three years;

(5) the Town only submitted evidence of comparable assessment methodology, which while it is some evidence of proportionality, must be related to current market value which was not done; and

(6) based on the above, market evidence the board finds the Property had a market value April 1993 of \$98,000, which equates to an assessed value of \$106,800 ($\$98,000 \times 1.09$).

The Taxpayers also submitted evidence of another property they stated was underassessed, due to improper listing of the basement. Alone, the underassessment of other properties does not prove the overassessment of the

Taxpayers' Property. For the board to reduce the Taxpayers' assessment solely because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with

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the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., id.

The Town should review the accuracy of the comparable assessment card, and if new corrections are warranted, they should be made for the next assessing year.

If the taxes have been paid, the amount paid on the value in excess of \$106,800 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 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

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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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Norman and Denise Hassell, Taxpayers; and the Chairman, Selectmen of Hinsdale.

Dated: March 29, 1995

Lynn M. Wheeler, Deputy Clerk

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ORDER

This order relates to the Taxpayers' letter of June 6, 1995 asking the board to enforce the proper abatement ordered in the board's decision of March 29, 1995.

Based on the information included in the Taxpayers' letter, the board finds the Town properly calculated the abatement. The assessment prior to the abatement was \$117,900. The ordered assessment was \$106,800. The difference in assessment is \$11,100. The 1993 tax rate was \$23.25 per thousand of assessment. The abatement before any interest for 1993 is \$258.08 ($\$11.10 \times \23.25). The equalization ratio is not used in calculating the abatement

because the tax rate is based on assessed value, not market value.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

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Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Norman & Denise Hassell, Taxpayers; and, Chairman, Selectmen of Hinsdale.

Date: June 23, 1995

Valerie B. Lanigan, Clerk

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