

Leslie Hubbard

v.

Town of Walpole

Docket No.: 14670-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 adjusted assessment of \$427,103 on a 72-acre lot (67 acres in current use; 5 acres not in current use) with two houses (the Property). The Taxpayer also owns, but did not appeal, two other lots in the Town with current-use assessments of \$4,177 and \$720. 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 carry this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the house's effective age, and thus applied depreciation, on the assessment card was low, and the depreciation should have been consistent with the garage/guest quarters at 15-20%;

- (2) the .25 adjustment to the land factor for multiple building sites was unwarranted because the Property is a single-family residence that cannot be subdivided, and further, the two buildings are only connected by a walkway roof structure; and
- (3) adjustments should have been made and the assessment decreased.

The Town argued the assessment was proper because:

- (1) the Property has 5 acres of land not in current use (.92 homesite and 4.08 acres backland to the homesite);
- (2) the home sits on a hill overlooking a pasture with a pond; the normal condition factor of 100 was increased by 200 for the view and by .25 for the second unit;
- (3) other lots with two living units were assessed consistently with the Property;
- (4) depreciation of 7% was appropriate for the house, which was well built and has been consistently maintained;
- (5) based on recently inspecting the Property, there were several omissions on the assessment card that would require an increased assessment; and
- (6) the assessment was fair and proportionate.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not show overassessment.

The Taxpayer did not present any credible evidence of the Property's fair market value. To carry his burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have been compared to the

the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

Without having any market information, the board could not analyze whether the Taxpayer's specific complaints had resulted in overassessment. "Justice does not require the correction of errors of valuation whose joint affect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217 quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899). In other words, the board looks at the overall assessment and asks whether the assessment, regardless of how it was calculated, fairly valued the property. Without having a market-value benchmark, the board could not conclude the Property was overassessed.

In response to the Taxpayer's numbered arguments above, the board makes the following observations.

1) The Town's evidence demonstrated that the house, while it may have an older actual age, was renovated several times and has been well maintained. The Town even inspected the Property's interior with the Taxpayer, and the Town stated the depreciation was consistent with the Property's condition.

2) The Taxpayer raised a legitimate question about whether the Town's .25 condition factor was warranted given the small size of the guest cottage and its proximity to the main house. Additionally, the board wonders whether the \$56,600 depreciated cost of that guest house was warranted. Cost does not always equal value, and the board has reservations about whether the guest house adds approximately \$64,000 in value to this Property. However, absent

market information to the contrary, the board could not find the guest house (the

depreciated replacement cost plus the added land value due to the .25 factor) resulted, overall, in the Property being overassessed.

A motion for rehearing, reconsideration or clarification (collectively "rehearing 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 rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing 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 rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing 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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Patrick C. Greene, Agent for Leslie Hubbard, Taxpayer; and Chairman, Selectmen of Walpole.

Date: May 29, 1996

Valerie B. Lanigan, Clerk

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