

**Edward J. Splaine**

**v.**

**Town of Ashland**

**Docket No.: 14767-93PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$27,200 (land only), consisting of 1.6 acres (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 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.

The Taxpayer argued the assessment was excessive because:

- 1) the Property was purchased in November 1980 for \$6,700;
- 2) the assessment increased 273% since 1992;

3) three lots consisting of 2 or less acres were assessed higher than larger lots (Taxpayer submitted a chart comparing assessments on a per-acre basis.); and

4) the Property's fair market value as of April 1, 1993, would have been \$7,200 based on a review of the local market values and based on discussions with real estate agents.

The Town argued the assessment was proper because:

1) there was a town-wide revaluation in 1993 and all sales that occurred within the Town were analyzed to establish land values;

2) comparable properties, similar to the Taxpayer's, demonstrated that properties were consistently assessed;

3) the Taxpayer's arguments that the tax bill increased and that the valuation went from \$7,200 to \$27,000 were not bases for an appeal; and

4) the Taxpayer failed to provide any supporting documentation, market data or back-up information on comparables to show the assessment was inequitable or disproportionate.

**BOARD FINDINGS**

Based on the evidence, the board finds the Taxpayer did not show overassessment for the following reasons, which will be more fully addressed below:

1) the Taxpayer did not provide any evidence concerning the Property's market value;

2) the Taxpayer's complaint about the assessment increase and the tax increase do not warrant an abatement; and

3) the Taxpayer's assessment analysis, which was based on a per-acre unit, did

not show overassessment.

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Assessments must be based on market value or a proportional share thereof. See RSA 75:1. In 1993, the revenue department determined that the properties in the Town were assessed at approximately market value. Therefore, to carry his burden, the Taxpayer should have made a showing of the Property's fair market value. 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. If the market value had been less than the assessment an abatement normally would be ordered. However, because the Taxpayer did not present any evidence on market value, we cannot find overassessment in this case.

Concerning the assessment increase, increases from past assessments are not evidence that a taxpayer's property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985).

Concerning the tax increase, the amount of property taxes paid by the Taxpayer was determined by two factors: 1) the Property's assessment; and 2) the municipality's budget. See gen., International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor i.e., the board will decide if the Property was overassessed, resulting in the Taxpayer paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. at 217. The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See The Bretton Woods Company v. Carroll, 84 N.H. 428, 430-31 (1930) (abatement may be

granted for disproportionality but not for issues relating to town expenditures);

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see also Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

The Taxpayer's assessment analysis, which used a per-acre unit of comparison, did not show overassessment because differing per-acre assessments does not necessarily prove inequitable assessment. The market, based on the board's experience of reviewing sales, indicates a higher per-acre value on smaller lots than for larger lots. Therefore, since the yardstick for determining equitable taxation is market value, assessments on a per-acre basis should differ to reflect this market phenomenon. Finally, the Taxpayer's assessment analysis and information concerning current listings did not make any distinction among the lots based on location, size, quality, and whether the properties had beach rights.

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. This, 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

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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

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Edward J. Splaine, Taxpayer; and Chairman, Board of Selectmen.

Dated: September 15, 1995

Clerk

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Melanie J. Ekstrom, Deputy