

**Philip S. Meuse**

**v.**

**Town of Derry**

**Docket No.: 14935-93PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessments of: \$132,300 on Lot 103 (the house lot); and \$414,900 on Lot 117-1 (the gas station)(the Properties). For the reasons stated below, the appeal for abatements is denied.

The Taxpayer has the burden of showing the assessments were 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 his burden and prove disproportionality.

The Taxpayer argued the house lot assessment was excessive because:

- (1) the house's exterior condition was poor and the interior condition was just liveable;
- (2) the house had been on the market since 1987 but due to high taxes it could not be sold;
- (3) the small lot limits the property's salability;

- (4) the house lot was inferior to the property across the street (392 Island Pond Road) and 135 Goodhue Road; and
- (5) the house lot was worth \$120,000 in April 1993.

The Taxpayer argued the gas station assessment was excessive because:

- (1) the land was purchased in 1989 for \$225,000, which included 2 functioning artesian wells;
- (2) a review of the Town's cost analysis indicated the base cost of the building was reasonable but the lump sum additions for such things as well/septic, landscaping, exterior lighting, paving and tanks were high based on actual costs;
- (3) the land assessment was high;
- (4) it was high when compared to 72 Crystal Avenue and 2 South Main Street, which are in better locations, have greater improvements and the volume of gas sales exceeds the subject's gallonage; and
- (5) the fair market value in April 1993 was \$350,000.

The Town argued the house lot assessment was proper because:

- (1) based on the square feet of living area, the property was assessed lower when properly adjusted and compared to 392 Island Pond Road and 135 Goodhue Street;
- (2) sales of dwellings greater than 2,000 square feet support the building assessment;
- (3) there was not a significant relationship between lot size and price paid; and
- (4) a March 1996 appraisal estimated a \$132,300 market value.

The Town argued the gas station assessment was proper because:

- (1) all gas stations and fast food restaurants had assessment increases because of the revaluation;
- (2) all gas stations were assessed via the cost approach;
- (3) a March 1996 appraisal estimated the fair market value as of April 1993 to be \$420,000.
- (4) four commercial land sales supported the value placed on the land; and
- (5) the residual land size was in error (0.55-acre compared to 0.12-acre), which if corrected would reduce the assessment by \$1,700.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer did not show overassessment. Moreover, the Town supported the assessments with its appraisals.

The Taxpayer did not show the house lot was overassessed. While the Taxpayer stated he was unable to sell the property due to the high taxes, the Taxpayer did not present sufficient evidence to show that he was actively marketing the property at a reasonable price. Specifically, the Taxpayer did not show that he was marketing the property in such a way to obtain a buyer for the \$137,810 equalized assessment ( $\$132,300 \text{ assessment} \div .96 \text{ equalization ratio}$ ). The Taxpayer also did not produce any market evidence that the property was overassessed, and the Taxpayer's value estimate was simply based on his personal opinion without any back up data.

Concerning the gas station, the Taxpayer did not show overassessment either by comparison to the other two gas stations he presented or by other reliable market data. The Taxpayer's attempt to show that the Town's costs Page 4  
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were excessive failed because the Town's assessment was based on the price

installed while the Taxpayer presented information only about the cost of the individual item, which cost did not include installation, permitting and general contracting. Finally, this board is not a microassessing board. Thus, we ask the Town to correct the excess land size, but we do not order a correction because the board finds the assessment, overall, to be reasonable.

For both Properties the following comments are appropriate. The Taxpayer did not present any credible evidence of the Properties' fair market values. To carry his burden, the Taxpayer should have made a showing of the Properties' fair market values. These values would then have been compared to the Properties' assessments and the level of assessment generally in 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.

The Taxpayer complained about the high amount of taxes he must pay. The amount of property taxes paid by the Taxpayer was determined by two factors: 1) the Properties' assessments; 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 decides if the Properties were 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

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

Finally, the Town presented an acceptable valuation summary of the Properties, and these reports clearly showed that market information and analysis supported the assessments.

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.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Philip S. Meuse, Taxpayer; Chairman, Selectmen of Derry.

Dated: April 3, 1996

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Valerie B. Lanigan, Clerk

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