

Fred Smith and Edwin Kaarela

v.

Town of New Ipswich

Docket No.: 15034-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$31,900 on a .74-acre lot with a small structure (12' x 18') (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 building was a 12 x 18-foot structure lacking water, electricity and sewer and in need of substantial repair;
- 2) a June, 1994 appraisal estimated a fair market value of \$23,900; and

3) based on a study of the premises and comparable sales, a realistic assessment would be \$23,900 .

The Town argued the assessment was proper because:

- 1) the Taxpayers' Property is on Pratt Pond with 218-feet of water frontage and is of above average quality when compared to neighboring properties;
- 2) Taxpayers' comparables 1 and 2 support the Town's assessment and comparable 3 was an estate sale;
- 3) the assessment, when equalized by the Town's ratio, falls within a reasonable range of the Taxpayer's estimated market value; and
- 4) similar properties demonstrate Taxpayers' assessment is proportional and not overassessed.

BOARD FINDINGS

We find the Taxpayers failed to carry their burden.

Assessments must be based on market value. See RSA 75:1. Due to market fluctuations, assessments may not always be at market value. A property's assessment, therefore, is not unfair simply because it exceeds the property's market value. The assessment on a specific property, however, must be proportional to the general level of assessment in the municipality. In this municipality, the 1994 level of assessment was 136% as determined by the revenue department's equalization ratio. This means assessments generally were higher than market value. The Property's equalized assessment was \$23,456 (\$31,900 assessment ÷ 1.36 equalization ratio). This equalized assessment should provide an approximation of market value. To prove overassessment, the Taxpayers would have to show the Property was worth less than the \$23,456 equalized value. Such a showing would indicate the Property was assessed

higher than the general level Page 3
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of assessment. However, the Taxpayers did not make such a showing. In fact, their 1994 appraisal of \$23,900 actually supports the assessment ($\$23,900 \times 1.36 = \$32,504$). Apparently the Taxpayers were either unaware of or did not understand the concept that assessments must be at whatever the Town's general level of assessment is relative to market value.

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 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

Paul B. Franklin, Member

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Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Edwin Kaarela, Taxpayer and representative; and Chairman, Selectmen of New Ipswich.

Dated: April 26, 1996

Valerie B. Lanigan, Clerk

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