

Anthony and Diane DeBlasie

v.

Town of New Hampton

Docket No.: 15043-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$210,750 (land \$31,550; buildings \$179,200) on a 1.65-acre lot with a house (the Property). 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 their burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the house sits in a valley and does not have a view where others in the development have a view and are assessed only slightly higher;
- (2) there are discrepancies in the size of the Property;
- (3) the land was purchased in 1989 for \$34,000 and the house was constructed by family members for approximately \$111,000; and
- (4) the Property value as of April 1994 was approximately \$180,000.

The Town argued the assessment was proper because:

- (1) the lot does not have a view but is nicely and expensively landscaped; the Taxpayers paid \$34,000 for the lot and spent \$50,000 in site work;
- (2) the home is of very good quality and very large; a 5% functional depreciation was applied for unfinished areas; and
- (3) the Taxpayers stated the replacement cost should be \$250,000 which supports the value of the subject.

Board's Rulings

Based on the evidence, we find the Taxpayers failed to prove overassessment.

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 123% as determined by the revenue department's equalization ratio. This means assessments generally were higher than market value. The Property's equalized assessment was \$171,500 ($\$210,750 \text{ assessment} \div 1.23 \text{ equalization ratio}$). 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 \$171,500 equalized value. Such a showing would indicate the Property was assessed higher than the general level of assessment. The Taxpayers testified the lot was purchased in 1989 for \$34,000 and the house was constructed for \$111,000 in 1991. However, the Taxpayers stated that most of

the labor and general contracting work was done by family members and that if they had contracted the construction out it would have cost approximately \$300,000. The Taxpayers also testified that their opinion of the market value of the Property was \$180,000 in 1994. Based on this evidence, it is hard to find that the Taxpayers are disproportionately assessed.

However, there was evidence indicating certain surrounding properties may have been underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayers Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers assessment 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 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 indicated that it was aware of the possible underassessment of other properties and would be reviewing sales to see if future adjustments are warranted.

The Taxpayers raised concerns about certain errors in the assessment relative to the cathedral ceiling and area near the entrance. However, the Taxpayers did not show these errors resulted in disproportionality. "Justice does not require the correction of errors of valuation whose joint effect 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). As

the board has found earlier, the assessment as a whole is not disproportionate to the Taxpayers' opinion of market value.

Lastly, the Taxpayers argued that lower quality properties near the entrance to the Winona Heights subdivision affected the Property's market value. While it is conceivable that that could occur, the sales submitted by the Town of other properties in Winona Heights indicated that the properties were, if anything, underassessed relative to market value and any influence of those neighboring properties is inherently reflected in the sales within Winona Heights.

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

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Anthony DeBlasie, individually and as agent for Diane DeBlasie, Taxpayers; and Chairman, Selectmen of New Hampton.

Date: August 27, 1996

Valerie B. Lanigan, Clerk

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