

Suzanne P. Whiton

v.

Town of Newmarket

Docket No.: 15159-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$224,000 (land \$114,900; buildings \$109,100) on a 4,610 square-foot lot with a house (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 and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Property's view of Great Bay may be altered due to permits granted to construct condominiums, which has a negative impact on the Property's value;

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(2) the land value was based on a 29,621 square-foot lot when the Property has only 4,610 square feet;

(3) part (25,101 square feet) of the original lot was deeded to an association, yet the Town continued to assess the area to the Taxpayer and not the association;

(4) the Town reduced the land size, but raised the price per-square-foot from \$4.20 to \$24.93; and

(5) the unit price per-square-foot was excessive compared to similar lots and the Town's methodology in assessing the price per-square-foot of comparable properties was inconsistent.

The Town argued the assessment was proper because:

(1) the Property was purchased in December 1993 for \$233,000;

(2) the Property is part of a condominium complex, and therefore, the adjusted per-unit prices will not be the same as the Taxpayer's comparables, which were not condo complexes;

(3) the per-unit prices were higher for smaller properties as compared to larger properties;

(4) the original assessment was \$500 more than the Taxpayer's purchase price, and the Taxpayer did not dispute the Property's market value; and

(5) the assessment was reduced to reflect the potential change in view.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not carry her burden of proof. While the Taxpayer wanted to distance herself from the

Property's market value, the board, and the Town, are obligated to review assessments based on market value. See RSA 75:1.

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The Taxpayer stated the Property's purchase price was \$233,000 in December 1993. While this is some evidence of the Property's market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). However, where it is demonstrated that the sale was an arm's-length market sale, the sales price is one of the "best indicators of the property's value." Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988). The Taxpayer stated that the sale was an arms'-length transaction and that the Property had a fair market value of \$233,000.

The Property's equalized assessment was \$230,927 (\$224,000 assessment ÷ .97 equalization ratio). Therefore, since the Property was worth approximately the equalized assessment, the Taxpayer has not shown overassessment.

The Taxpayer's argument concerning the change in the unit price for the land assessment does not overcome the market value information. Moreover, differing square-foot assessment values are not necessarily probative evidence of inequitable or disproportionate assessment. The market generally indicates higher per-square-foot prices for smaller lots than for larger lots. The yardstick for determining equitable taxation is market value (see RSA 75:1), and thus, it is necessary for assessments on a per-square-foot basis to differ to reflect this market phenomenon.

The Taxpayer raised concerns about certain errors in the assessment. However, the Taxpayer did not show how these errors resulted in

disproportionality. "Justice does not require the correction of errors of

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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).

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.

Thus, 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

Ignatius MacLellan, Esq., Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Caleb W. Whiton, Agent for Suzanne P. Whiton, Taxpayer; and Chairman, Selectmen of Newmarket.

Date: February 29, 1996

Lynn M. Wheeler, Deputy Clerk

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ORDER

This order relates to the "Taxpayer's" rehearing motion, which is denied. The motion fails to establish that the board's decision was erroneous in fact or law. See RSA 541:3.

The rehearing motion, as with the Taxpayer's original arguments, focused on the Taxpayer's assertion of a disproportionality in the land assessment when compared to three other land assessments. As stated in the decision, such a comparison does not show overassessment for several reasons, including:

- 1) the comparison involved only three other properties;
- 2) there may have been errors in assessing those three properties which would not show overassessment of the Taxpayer's "Property";
- 3) the focus must be broader -- the Taxpayer should have shown how the

Property's equalized assessment exceeded the Property's market value; such a comparison looks at how the Property's assessment compares with the general level of assessment in the "Town," not just in comparison to a few properties; and

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4) the Taxpayer did not dispute her purchase price or show how the Property was worth less than the equalized assessment.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Caleb W. Whiton, Agent for Suzanne P. Whiton, Taxpayer; and Chairman, Selectmen of Newmarket.

Date: April 16, 1996

Valerie B. Lanigan, Clerk

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