

George A. and Donna M. Northover

v.

Town of Madbury

Docket No.: 15315-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 adjusted assessment of \$175,100 (land \$49,500; buildings \$125,600) on a 1.929-acre lot with a single-family home (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.

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The Taxpayers argued the assessment was excessive because:

- (1) there is a drainage ditch on the Property;
- (2) there were errors on the assessment-record card, i.e., the house has 2,359 square feet not 2,394, there is one fireplace not two, and there is no central vacuum;
- (3) the Town raised the assessment after the abatement review, yet they never corrected the errors;
- (4) superior homes in the neighborhood with better quality construction and extra features had lower assessments than the Property;
- (5) if larger homes are worth less as the Town states, the Property should have a lower assessment than two of the comparables; and
- (6) the Property had a \$143,860 fair market value as of April 1, 1994, based on comparable properties.

The Town argued the assessment was proper because:

- (1) the Taxpayers' comparable #1 had more square feet than the Property, yet the Property had a higher sale price;
- (2) the Taxpayers' comparable #3 appears underassessed;
- (3) the Property's land value was reduced by \$500 to address the drainage ditch;
- (4) the differences in per-square-foot values is attributable to differences in interior pricing;
- (5) the assessment was based on 2,304 square feet not 2,359 or 2,394 as stated by the Taxpayers; and
- (6) the assessment was well within range of comparable properties'

assessments.

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BOARD'S RULINGS

Based on the evidence, the board finds the Taxpayers did not carry their burden and show disproportionality.

Assessments must be based on market value. See RSA 75:1. However, the Taxpayers did not present any credible evidence of the Property's fair market value. To carry their burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment 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 Taxpayers' sole evidence was a comparison of their Property to the assessments of three nearby properties. The board gives little weight to this comparison because the Taxpayers did not adequately account for the difference in construction grade in some of the comparables, overstated the value of the extras in its adjustments (compared to normal construction costs and the Town's assessed values for those extras) and did not account for the differing depreciations (conditions) of the comparables. Further, the assessment of comparable #1 (Orlando) had been adjusted by the Town, and the revised assessment had not been used by the Taxpayers. The Town also submitted evidence that the third comparable (Gloddy) was most likely underassessed due to the unfinished adjustment for the addition and due to not adjusting the depreciation to account for the new construction. Lastly, the Town's analysis and description of the Property's assessment and the comparables' assessments

indicate the Town was attempting to use consistent methodology in assessing
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the properties. The use of consistent methodology in assessing is some
evidence of proportionality. See Bedford Development Co. v. Town of Bedford,
122 N.H. 187, 189-90 (1982).

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

Paul B. Franklin, 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 George A. and Donna M. Northover, Taxpayers; and Chairman, Selectmen of Madbury.

Date: June 24, 1996

Valerie B. Lanigan, Clerk

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