

Charles C. Vogler

v.

Town of Meredith

Docket No.: 15428-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessments of: \$31,300 on Lot 28, a vacant 1.58-acre lot; and \$136,800 (land \$38,800; buildings \$98,000) on Lot 29, a 1.67-acre lot with a house (the Properties).

The board understands that due to errors on the assessment-record card, the original assessments were to be adjusted by the Town to: Lot 28 \$29,100; and Lot 28 \$132,300. The board does not order such an abatement because the Taxpayer 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. 214, 217 (1985), quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899). As detailed below, the Properties were not (overall) overassessed.

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 abatements is denied.

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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 this burden.

Both parties submitted detailed arguments in their briefs, and the board will not reiterate those arguments here. The board did, however, thoroughly review the briefs. The parties' general arguments are listed below.

The Taxpayer argued the assessments were excessive because:

- (1) the Properties were assessed as one parcel from 1975 to 1994; in 1994, the Town spot assessed the Properties as separate lots, increasing the assessment by 20%;
- (2) there were errors in the building measurements, and the buried oil tank detracts from the Properties' values;
- (3) the building was graded the same as neighboring homes, yet those homes have superior construction quality and materials;
- (4) based on comparable sales, the Properties had a combined \$167,950 market value, and the total assessment should be \$142,750 ($\$167,950 \times .85$ ratio for Sky Acres);

- (5) three realtors estimated a total \$165,000 value for both lots;
- (6) the assessments should reflect the Properties' greater value as one lot rather than as two separate lots; and
- (7) the Town did not provide any sales data to support the assessments.

The Town adjusted the assessments after correcting the measurements and argued the revised assessments were proper because:

- (1) the Taxpayer's evidence supported a finding that the Properties were underassessed compared to the general level of assessment in the Town;
- (2) the same methodology was applied throughout the Town using standards established during the 1987 revaluation;

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- (3) the Taxpayer is a former Town assessor and should be familiar with the standard assessing practices used to value his Properties;
- (4) in 1993/1994, the Town discovered approximately 100 property owners, including the Taxpayer, were incorrectly assessed one value for two or more lots;
- (5) the Taxpayer purchased the Properties at separate times by separate deeds, the Properties appear as two separate lots on the Sky Acres subdivision plan, and the Taxpayer never legally merged the Properties into one lot; therefore, the lots should be separately assessed;
- (6) no documentation was submitted to substantiate the realtors' value estimates;
- (7) the vacant lot has road frontage and is buildable, the house is above average as reflected in the Average +10 grading, the buried oil tank is permissible after obtaining a permit, and Lot 29 has an approved septic design

- for a three-bedroom home (the third bedroom is used as a dining room);
- (8) a comparable property was listed for \$155,000, and a vacant lot was listed for \$23,900, both of which supported the assessments; and
- (9) the Taxpayer's vacant land sales were all in current use.

The Town requested the board assess \$220 in costs against the Taxpayer for maintaining a frivolous appeal.

BOARD'S RULINGS

Based on the evidence, the board finds the Taxpayer did not show the Properties were overassessed. In summary, the board finds the Town did not spot assess the Properties, the Taxpayers's ratio study did not reflect the general level of assessment, and applying the revenue department's ratio of 1.10 to the Taxpayer's market value assertion, demonstrates the assessments were not excessive.

Turning first to the Taxpayer's assertion of spot assessing, the board finds the Town did not act in an arbitrary manner or perform a "spot assessment." Rather, the Town fulfilled its obligation to correct any errors

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discovered during its annual review of property assessments. See RSA 75:8. The two lots were purchased on different dates and were recorded separately in the registry. Both lots are buildable tracts and are not interdependent with regard to their utility. Therefore, the Town did not err by assessing these lots separately.

RSA 75:8 states:
The assessors and selectmen shall, in the month of April in each year, examine all the real estate in their respective cities and towns, shall reappraise all such real estate as has changed in value in the year next proceeding, and shall correct all errors that they find in the then existing appraisal ***.

As stated in Appeal of NET Realty Holding Trust, 128 N.H. 795, 799 (1986), a fair and proportionate tax can only be achieved through a constant process of correction and adjustment of assessments. Therefore, given the information presented, the board finds the Town did not engage in spot assessment.

We now turn to the ratio issue. The Taxpayer asserted the correct equalization ratio should be .85 not the revenue department's 1.10. In Appeal of City of Nashua, 138 N.H. 261, 266 (1994), the court stated that a party may proffer a different ratio, but that party has to prove the proffered ratio is accurate concerning the general level of assessment in the municipality. The Taxpayer's ratio evidence focused only on one area of the Town and not the Town generally. The revenue department's ratio was a town-wide ratio study, and we find it to be more representative of the general level of assessment in the Town. Therefore, the board will use the 1.10 ratio.

The Taxpayer presented his own analysis on the Properties' values. He also offered the opinion of three local realtors. The Taxpayer stated: "The consensus was that the market value was about \$165,000 for the combined (two lot) package." The Taxpayer did not present any evidence or data concerning the realtors' methodology used to calculate the figure. Nonetheless, even if we accept the \$165,000 figure, that figure does not show overassessment. The \$165,000 times the 1.10 equalization ratio would result in a combined

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assessment for the Properties of \$181,500. The combined assessments are \$168,100 (\$136,800 + \$31,300). An alternative way to look at this would be to compare the \$165,000 asserted value with the equalized assessments. The total equalized assessments are \$152,800 (\$168,100 total assessment ÷ 1.10 ratio),

and this number is also lower than the Taxpayer's asserted market value. Therefore, because the Taxpayer has failed to show the Properties were assessed higher than the general level of assessment, the board denies the appeal.

The board denies the Town's motion for costs. While we agree the Taxpayer's case was weak, we do not find it was frivolous given the ratio arguments. See TAX 201.39 (costs).

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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Charles C. Vogler, Taxpayer; and Chairman, Selectmen of Meredith.

Date: April 8, 1997

Valerie B. Lanigan, Clerk

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