

Betty J. Pierce

v.

Town of Tilton

Docket No.: 15644-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$117,300 (land \$58,800; buildings \$58,500) on a .20-acre lot with a house (the Property). The Taxpayer also owns, but did not appeal, another vacant lot in the Town with a \$7,200 assessment. 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 a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the land value increased \$21,000 due to a change in the condition factor from 4.5 to 7.0, yet the land did not change and comparable properties did not receive the same upward adjustment;
- (2) when compared to the abutters, the Property has the least lake frontage, no beach, the steepest slope to the lake, and is the only lot with a retaining wall (90% of which was destroyed in a flood), yet the Property has the highest condition factor;
- (3) comparable properties had lower per-acre prices than the Property;
- (4) the Property had a \$90,000-\$100,000 market value as of April 1, 1994 based on the \$80,000 sale of a comparable property;
- (5) the Property's topography warrants a downward adjustment to the condition factor, not an increase;
- (6) the Town's comparables were not comparable because they have flat waterfronts with beach areas; and
- (7) the condition factor was originally 8.5 during the revaluation; Avitar reduced it to 5.75 and the Town further reduced it to 4.5 after a comparison with abutting lots and a review of the Property's physical condition.

The Town argued the assessment was proper because:

- (1) the assessment is based on standards established during the 1990 revaluation and were applied consistently throughout the Town;
- (2) the condition factor recognizes waterfronts, views, size, quality of waterfront, etc.;
- (3) smaller lot sizes have higher condition factors and are worth more per unit than larger lots;
- (4) the Property's condition factor is consistent with factors applied to other comparably sized lots in the neighborhood;

- (5) the condition factor was set during the 1990 revaluation and then lowered to 4.5 with no record of

authorization by the board of selectmen; after reviewing the Town's records to confirm this, the factor was raised back to 7.0;

(6) the change in the condition factor is authorized by RSA 75:8, which authorizes selectmen to correct all errors; and

(7) the Taxpayer presented no evidence of market value.

BOARD'S RULINGS

Based on the evidence, the board finds the Taxpayer failed to carry her burden.

The board reaches this conclusion for two reasons: 1) the Taxpayer's sole evidence of market value was her statement contained in the Taxpayer's brief, indicating a market value of \$90,000 to \$100,000 based on the sale of the adjoining property (Map 22, Lot 54); and 2) a comparison of the Taxpayer's land portion of the assessment appears reasonable and is consistent with similar properties.

First, 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 139% as determined by the revenue department's equalization ratio. This means assessments generally were higher than market value. The Property's equalized assessment was \$84,400 (\$117,300 assessment ÷ 1.39 equalization ratio). This equalized assessment should provide an approximation of market value. To prove overassessment, the Taxpayer would have to show the Property was worth less than the \$84,400 equalized value. Such a showing would indicate the Property was assessed higher than the general level of assessment. The Taxpayer's \$90,000 - \$100,000 opinion of market value is in excess of the equalized value and thus provides no basis for an abatement.

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Second, the board reviewed all the comparable assessments submitted by both parties. The board finds the Town's methodology appears to be consistent in that the condition factor collectively reflects the size of the lots and any positive or negative physical features. The several small lots closest in size to the Taxpayer's have condition factors that range from 6.75 to 7.75. With the exception of Lot 44, which was

slightly smaller, the Taxpayer's lot had the lowest assessment and, thus, appears to reflect the size and topography issues raised by the Taxpayer.

Certainly the "bumping around" of condition factor that occurred unnecessarily raises questions as to the credibility of the Property's assessment. However, the Town is correct in that it must fulfill its RSA 75:1 and 75:8 responsibility of annually reviewing and making certain all properties are proportional to market value. Based on the evidence submitted, the board finds the resulting assessment with a condition factor of 7 appears reasonable and proportional to the other assessments and the limited market data submitted.

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

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 Betty J. Pierce, Taxpayer; and Chairman, Selectmen of Tilton.

Date: November 27, 1996

Valerie B. Lanigan, Clerk

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