

Harry B. and Rita J. Harden

v.

Town of Amherst

Docket No.: 15728-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$186,400 (land \$100,500; buildings \$85,900) on a .64-acre lot with a house (the Property). The Taxpayers also own, but did not appeal, two other properties in the Town -- Lot 24-45 (assessed \$114,800) and Lot 8-107-01 (assessed \$15,700). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or was unlawful, resulting in the Taxpayers 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 Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

- (1) when compared to similar properties, it was excessive;

- (2) the abutting lot (107) -- a newer home and a larger lot with more frontage -- sold for \$167,300 in August 1994;
- (3) the increased assessment was not in line with the general level of increase in the Town;

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- (4) a frontage adjustment of 1.22 (based on an effective frontage of 150 feet) and .80 should be applied for size/shape because the amount of frontage is more than the norm on the lake, and the value of the frontage over 100 feet would not be reflected in the selling price; and
- (5) the Property should have been assessed at \$162,514.

The Town argued the assessment was proper because:

- (1) three comparable sales supported the assessment;
- (2) the Town does not disagree with adjusting the effective frontage to 150 feet, which would decrease the land assessment to \$95,800 for a revised total of \$181,700;
- (3) the Taxpayers owned another property on the lake that sold in May 1995 for \$142,000 and was assessed for \$114,800, indicating the nonappealed property was underassessed; and
- (4) the Taxpayers' entire estate must be considered.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not show their total estate was overassessed. To be entitled to an abatement, a taxpayer who owns multiple properties in a municipality must show the Town overassessed the taxpayer's entire estate. Appeal of Town of Sunapee, 126 N.H. 214, 217

(1985). This means that a taxpayer who owns multiple parcels must not only show that the appealed parcel was overassessed but must also show whether the nonappealed properties were properly assessed.

In this case, the Taxpayers failed to show their entire estate was overassessed. Even if the board accepted the Taxpayers' \$160,514 asserted value for the appealed Property, the Town demonstrated that the Taxpayers' Lot 24-45 sold in 1995 for \$142,000 when the assessment was only \$114,800. While one sale does not establish market value, the sale of a property can be one of the best value indicators. Moreover, the Taxpayers did not prove any

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alternative value. We find the Taxpayers did not show that Lot 24-45 was properly assessed, and therefore, the board cannot grant an abatement on the appealed Property.

The Taxpayers sought an assessment of \$162,500 on the appealed Property, requesting an abatement of \$23,900. The difference between the sale price of Lot 24-45 and its assessment was \$27,200, which could indicate that Lot 24-45 was underassessed by \$27,200.

Because the Taxpayers did not show that its entire estate was overassessed the board cannot grant the abatement as requested by the Taxpayers. Nonetheless, the Town indicated that it would not be inappropriate to assess the appealed Property with 150 waterfront feet, which would reduce the Property's assessment to \$181,700 (land \$95,800; building \$85,900). However, because the Taxpayers did not show overassessment in 1994, any adjusted assessment would apply to 1996. (The first year that the Taxpayers

did not own Lot 24-45). The Taxpayers owned Lot 24-45 on April 1, 1995, and thus, that lot would be considered part of the Taxpayers' estate in 1995.

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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Harry B. and Rita J. Harden, Taxpayers; and Chairman, Selectmen of Amherst.

Date: December 20, 1996

Valerie B. Lanigan, Clerk

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