

Ruth P. Melton

v.

Town of Deering

Docket No.: 15790-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$171,500 (land, \$102,500; building, \$69,000) on 1.5 acres with a seasonal camp (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 granted to the Town's recommended \$143,900 assessment.

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 Taxpayers carried this burden.

The Taxpayer argued the assessment was excessive because:

- 1) values placed on lake properties were excessive and disproportionate;
- 2) the Property is near the public recreation area;

3) properties with more frontage and acreage were assessed less;

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- 4) the Property is only seasonal, and it would be costly to modernize the camp;
- 5) a November 1995 value opinion estimated a \$120,000 - \$130,000 value;
- 6) the Property has been on the market for two years with no offers; and
- 7) the Property was worth \$100,000 on April 1, 1994.

The Town recommended adjusting the assessment to \$143,900 because the Property abuts the recreation area.

The Town argued the recommended assessment was proper because:

- 1) lakefront front-foot prices were established based on the revaluation sales analysis with adjustments for access and topography;
- 2) the building's problems were addressed through applying physical and functional depreciation;
- 4) the Taxpayer's value opinion did not provide any supporting documentation;
- 5) the Faber assessment included current-use property, and the Abernathy sale may not have been an arm's-length transaction; and
- 6) no further adjustments were warranted.

The Taxpayer filed a rebuttal to the Town's arguments and stated the Town's \$143,900 adjusted assessment was unacceptable because it exceeded market value.

BOARD FINDINGS

Based on the evidence, the board finds the Town's \$143,900 recommended assessment is the proper assessment for this Property. The Town correctly considered the impact of the Town recreation area on the Property and adjusted the assessment accordingly.

The Taxpayer has the burden of showing the assessment was excessive. This is generally done by presenting evidence concerning the appealed Property's fair market value and comparing this fair market value to the Town's general level of

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assessment. The general level of assessment is reflected by the equalization ratio, which was 100% in 1994. Therefore, the Taxpayer was required to show that the Property was worth less than the \$143,900 adjusted assessment. In her brief, the Taxpayer stated the Property was worth \$100,000, and the Taxpayer submitted a realtor's letter that estimated a \$120,000 to \$130,000 value. Neither value opinion was supported by any sales or other documentation. Additionally, the Taxpayer stated the Property had been on the market, but the Taxpayer did not provide any information about the listing price or marketing efforts.

While the board must admit the sales data is scarce, the Town apparently performed the revaluation with the best available data, which included sales on Deering Lake. The Town then applied its methodology consistently to all

Deering Lake properties. This testimony is evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

Finally, although the board did not receive good photographs of the Property and its surroundings, the \$143,900 assessment does not seem unreasonable.

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. This, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule

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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

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Ruth P. Melton, Taxpayer; and Chairman, Board of Selectmen.

Date: October 30, 1996

Valerie B. Lanigan, Clerk

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Ruth P. Melton

v.

Town of Deering

Docket No. 15790-94PT

ORDER

This order responds to the "Taxpayer's" rehearing motion, which is denied. The motion did not demonstrate that the board erred in its decision, and thus, the motion failed to show any "good reason" to grant a rehearing. See RSA 541:3.

The board concludes the decision adequately addressed the Taxpayer's appeal. The following responds briefly to the numbered paragraphs in the Taxpayer's rehearing motion.

1) The board must value the appealed property as of the assessment date - April 1, 1994. To the extent new proposals have been made for the abutting recreational property, the board cannot consider this in the context of a 1994 appeal. Those issues may be relevant in a subsequent appeal. Additionally, the board does not accept new information, such as the proposal for the recreational area, after a hearing has been held. TAX 201.37 (e).

2) The board considered all of the evidence that was presented to it. Contrary to the Taxpayer's assertion, the "Town" did provide the board with

information about how the assessment was initially calculated. Most importantly, the Town provided the board with five sales that occurred on Deering Lake. Of the five sales, the Town determined that three of the sales were arm's-length sales, and these sales formed the basis for the \$600 per-front-foot value. The Town also provided the frontage and depth tables that were used in calculating the assessment.

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Concerning the Taxpayer's realtor's opinion, the board again states that the letter did not provide adequate information or analyses to support the value opinion.

3) and 4) The board stands by the decision on these two issues.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I certify that copies of the within Order have this date been mailed, postage prepaid, to Ruth P. Melton, Taxpayer; Allan E. Rappleyea, Esq., counsel for the Taxpayer; and Chairman, Selectmen of Deering.

Date: December 10, 1996

Valerie B. Lanigan, Clerk

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