

Marilyn A. Pope Revocable Trust

v.

Town of Madison

Docket No.: 16066-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$58,000 (land \$46,100; buildings \$11,900) on a 4.5-acre lot with a tennis court (the Property). The Taxpayer also owns, but did not appeal, another property in the Town with a \$302,200 assessment. 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. The Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the lot is on a gravel road with no beach rights;
- (2) the Property is only one buildable lot due to the location of the tennis court;
- (3) an adjacent lot of approximately two acres was assessed at approximately \$26,000; and

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- (4) an appraisal with an effective date of July 26, 1995, estimated the market value of the Property to be \$24,000.

The Town argued the assessment was proper because:

- (1) the lot has the potential for subdivision;
- (2) the highest and best use of the Property is its present use because it enhances the value of the Taxpayer's nonappealed property across the street (the Lakefront Property); and
- (3) the Taxpayer's appraisal did not use appropriate comparable sales.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed.

The Property is a 4.5-acre tract of land having 400+ feet of frontage on a town-maintained, gravel road. The Property is improved with a tennis court and is located across the street from another property owned by the Taxpayer. The Lakefront Property is improved with a single-family dwelling and has waterfrontage on Silver Lake. The Taxpayer proffered no information concerning the value of the Lakefront Property. The supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted.

Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The Taxpayer should have provided information regarding the market value of the nonappealed property enabling the board to make a determination on the market value of the Taxpayer's entire estate. Such evidence is especially required where one property supports the other property. Here, the appealed Property supports the Lakefront Property, and the Town asserted this enhances the properties' values.

In addition to failing to show the value of its entire estate, the Taxpayer did not present any credible evidence of the appealed Property's fair market value. To carry its burden that the appealed Property was overassessed, the Taxpayer 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

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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. 214, 217-18 (1985). The Taxpayer submitted an appraisal of the Property. The board finds this appraisal to be nonpersuasive for several reasons.

1) The appraiser made adjustments to the comparable sales with no addendum to explain the basis for the adjustments or without providing any supporting market evidence.

2) The appraiser did not address the Property's subdivision potential or use along with the Lakefront Property. The more potential uses for a property, the more valuable it may be. The appraiser should have considered the various scenarios under which the Property might sell to determine the highest and best

use. One such scenario would be whether the tennis court would stand alone and sell separately or would it sell as an amenity of the Lakefront Property and enhance the Taxpayer's entire estate.

3) The appraiser stated that the beach rights of the comparable sales have equal value to the tennis court. Does the appraiser mean that beach rights on Moore's Pond are the same as those on Silver Lake and that all beach rights equate to the value of the tennis court? Regardless of the appraiser's intent, he offered no supporting data for his assumption.

4) The Town offered testimony that the Taxpayer's appraiser used comparable sales that were inappropriate. The Town testified that: 1) comparable #1 was on Moore's Pond but greatly inferior due to size, location and lack of subdivision potential; 2) comparable #2 is near another small body of water and has no subdivision potential; and 3) comparable #3 was "a joke" and should not be considered as it is a back lot and has no relevance to the Property.

5) Finally, it is difficult for the board to accept the appraiser's statement that "all remaining comps support the estimated value" when those comparable sales require net adjustments of 49% and 44%, which is far beyond accepted standard appraisal guidelines.

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The Town offered a sale on 3 Caroline Avenue as the most comparable to the Taxpayer's package, but the board gives this sale little weight due to the nature of the sale. The grantor and grantee in this transaction appear to be related and the sale would not be considered arm's length.

The Town provided sales of 2.0 - 2.5 acre lots with no waterfrontage that sold in the \$20,000 to \$22,000 range. Given the size and the subdivision

potential of the Property and the added value of the tennis court, the board finds these sales supported the Town's position.

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.

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 William C. Pope, Agent for Marilyn A. Pope Revocable Trust, Taxpayer; and Chairman, Selectmen of Madison.

Dated: June 3, 1997

Valerie B. Lanigan, Clerk