

John R. Taylor

v.

Town of Lempster

Docket No.: 16541-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessments on the following "Properties."

Lot No.	Assessment	Description
252	\$ 11,200	a vacant, 2.52-acre lot
249	\$ 56,000	a 2.52-acre lot with a house
210	\$ 12,100	a vacant, 3.98-acre lot
228	\$ 11,800	a vacant, 3.48-acre lot

The Taxpayer also owns, but did not appeal, two other lots in the Town with a combined, \$79,800 assessment. The Taxpayer requested leave to not attend the hearing pursuant to board rule TAX 202.06(d) and, therefore, this decision is based in part on evidence and arguments previously submitted by the Taxpayer.

The Municipality did not appear but consistent with board rule TAX 202.06(h), the Municipality was not defaulted. This decision is based on the evidence presented to the board. For the reasons stated below, the appeal for

abatements is denied.

The Taxpayer has the burden of showing the assessments were disproportionately high or were 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,

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the Taxpayer must show that the Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

The Taxpayer argued the Properties' assessments were excessive because:

- (1) the four lots were purchased in 1991 for a total of \$60,000;
- (2) the lots are not on a town road and two of the lots are unusable most of the year because they are mostly under water;
- (3) an adjacent property was purchased in 1988 for \$137,000 and the taxes are lower than the appealed Properties; and
- (4) the Taxpayer has been trying to sell the Properties for 2 years but the high assessment makes it prohibitive for prospective purchasers.

The Town did not attend the scheduled hearing and failed to submit any written evidence.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Properties were disproportionately assessed. The Taxpayer did not present any credible evidence of the Properties' fair market value. To carry his burden, the Taxpayer should have made a showing of the Properties' fair market values.

These values would then have been compared to the Properties' assessments and

the level 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 stated he purchased all four lots for \$60,000 in 1991. While this is some evidence of the Properties' market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). The Town noted on the assessment-record cards that two properties were purchased for \$60,000 from Sugar River Savings Bank. The notation that the Properties were purchased from the Sugar River Savings Bank leads the board to surmise that they may have been purchased through foreclosure which may not be considered an arm's-length

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transaction. The Taxpayer did not state how long the Properties had been on the market, if they were listed through a broker, if they were offered as individual lots or sold as a package. In fact, he did not supply copies of the deeds or give the board any evidence to show that the purchase of the four lots was at market value. Further, the four lots are separate lots of record, could be sold separately, and the Taxpayer submitted no evidence to show the market values of the lots as separate units.

The Taxpayer stated that the Properties are not on a town road and that two of the lots were unusable because a substantial portion of the lots was under water most of the year. However, the Taxpayer did not even indicate which of the four lots were wet and no photographs of the Properties were submitted depicting the wet area.

The Taxpayer also stated that he had purchased two other lots adjacent

to the Properties in 1988 for \$137,000 and that the Properties were assessed disproportionately when compared to the adjacent lots. Again, the Taxpayer did not supply any information about the two abutting lots (i.e. size, topography, improvements) for the board to make any kind of informed decision. The assessment-record cards were not even submitted to the board.

Lastly, the Taxpayer stated that he had been attempting to sell the Properties for two years. However, the Taxpayer did not state how he was marketing the Properties (i.e., listed by a broker, sign on the Properties, newspaper, etc.).

In short, the Taxpayer submitted no market evidence of the lots' values as of April 1995, did not submit any evidence of the assessments of comparable properties in the Town to show disproportionality and did not submit any photographs of the Properties. It is the Taxpayer's burden to show the board that the Properties were disproportionately high or unlawful and the Taxpayer submitted no evidence to justify the board reducing the assessments. The board does note that \$11,000 to \$12,000 lot values for 2.5 to 4.0 acre properties does not seem unreasonable.

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While the Taxpayer failed to carry his burden, the board does note that the Town did not submit any information in support of its assessments. Since the Town was recently revalued, the Town should have submitted sales for the board's consideration. RSA 75:1 requires that assessments be in line with market value. Therefore, providing sales is essential for the board to compare the Property's assessment with fair market value and the general level of assessment in the municipality. See Appeal of NET Realty Holding Trust,

128 N.H. 795, 796 (1986).

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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John R. Taylor, Taxpayer; and Chairman, Selectmen of Lempster.

Date: March 18, 1997

Valerie B. Lanigan, Clerk

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