

Susan L. Randall

v.

Town of Windham

Docket No.: 16555-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 adjusted assessment of \$106,000 (land \$89,200; buildings \$16,800) on a .29-acre lot with a cottage (the Property). For the reasons stated below, the appeal for abatement is granted to the Town's recommended \$95,000 assessment.

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, but, nonetheless, we grant the abatement to the Town's adjusted assessment.

The Taxpayer argued the assessment was excessive because:

(1) the Property is for seasonal use only, and there is no guarantee that it

could be used year-round; and

(2) seasonal-use properties should be valued for less.

The Town argued the adjusted \$95,000 assessment was proper because:

(1) the appraisal supported the assessment, if not a higher value; and

(2) the Taxpayer did not present any evidence to show the value difference between seasonal and year-round properties.

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Board's Rulings

Based on the evidence, the board finds the Taxpayer did not show overassessment for the following reasons.

1) The Taxpayer's main argument was that seasonal properties should have been assessed for one-half the land value of year-round properties. However, the Taxpayer did not support this assertion with any market information. At the same time, the Town submitted an appraisal that included two sales, both of which supported the conclusion that seasonal properties were commanding substantial value. The board has often observed the phenomenon that seasonal properties can command a premium even though they cannot be used year-round.

2) The Taxpayer also argued that the year-round properties receive substantially more town services as compared to the seasonal properties. Lack of municipal services is not necessarily evidence of disproportionality. The basis of assessing property is market value. See RSA 75:1. Any effect on value due to lack of municipal services would be reflected in the selling prices of comparables and consequently in the resulting assessments. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

3) The Taxpayer did not present any credible evidence of the Property's

fair market value. To carry her burden, 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 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).

4) The Taxpayer's 1993 purchase price was a family transaction, and therefore, could not be relied upon.

If the taxes have been paid, the amount paid on the value in excess of \$95,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule

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TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1996. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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 James C. Randall, Agent for Susan L. Randall, Taxpayer; and Chairman, Selectmen of Windham.

Date: June 19, 1997

Valerie B. Lanigan, Clerk

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