

Cecil F. and Virginia J. Thistleton

v.

Town of Brookline

Docket No.: 6342-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$195,000 (land, \$86,800; buildings, \$108,200) on an 8-acre lot with a garrison-style house (the Property). The Town failed to appear, but consistent with our Rule, TAX 102.03(g), the Town was not defaulted. This decision is based on the evidence presented to the board. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) in 1988, the Town assessed the land at \$17,350 and in 1989, the assessed land value was \$86,800;
- (2) in 1988, the building was assessed at \$61,000 and in 1989, the assessed value was \$109,200;

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(3) the board of selectmen have never made an interior inspection of the Property despite numerous requests;

(4) the Property cannot be subdivided because of its topographical problems as depicted on the subdivision plan submitted as Taxpayers exhibit 1;

(5) the landscaping is in poor condition and the driveway is severely cracked;

(6) the house has numerous physical problems i.e. the woodwork and ceilings need painting, the baths need repairs, all floors need refinishing, the porch is unheated, no full cellar, cellar floor is cracked, windows need repair; and

(7) a "ballpark" value of the Property in 1989 was \$50,000 for the entire Property.

The Town presented no evidence other than the assessment-record card.

The board's inspector inspected the property, reviewed the assessment-record card and a comparable property, and filed a report with the board.

This report concluded an additional 5 percent adjustment should be depreciated for the building's age and a 25 percent topography adjustment should be applied.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$166,705 (land \$65,260 and building \$101,445). This assessment is ordered because:

(1) the age and condition of the building warrants an additional 5

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percent depreciation; and

(2) the severe topographic factors warrant a 25 percent adjustment to the land.

Increases from past assessments are not evidence that a taxpayer's property is disproportionally assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985). The focus of our inquiry is proportionality, requiring a review of the assessment to determine whether the property is assessed at a higher level than the level generally prevailing. Appeal of Town of Sunapee, 126 N.H. at 219; Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982). There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the Municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

The Town failed to submit any sales to support the assessment. 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).

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The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b).

If the taxes have been paid, the amount paid on the value in excess of \$166,705 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Cecil F. and Virginia J. Thistleton, Taxpayers; and Chairman, Selectmen of Brookline.

Dated: April 11, 1993

Valerie B. Lanigan, Clerk

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