

Bradley R. Thayer
v.
Town of Dalton

Docket No. 7431-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$330,750 (land, \$214,000; buildings, \$116,750) on a mountain-view home with 6.2 acres (the Property). For the reasons stated below, the appeal for abatement is granted.

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 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved he was disproportionally taxed.

The Taxpayer argued the assessment was excessive because:

- (1)the Town overvalued the contributory value of belonging to the home owner's association and of the Property being subject to certain covenants; and
- (2)an appraisal indicated a fair value of \$220,000.

The Town argued the assessment was proper because:

- (1)it was based on two sales in the subdivision; and
- (2)the association membership and covenants greatly enhanced the Property's value.

Note: The board has not reiterated the numerous other arguments presented at the hearing.

Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the

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evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975). 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).

As stated above, 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 perfect assessment of a property. Rather, there is a range of acceptable assessments for each property. The question is thus whether the assessment falls within a reasonable range from a median ratio as indicated by an acceptable coefficient of dispersion following a good reassessment, considering the property involved and other assessments in the municipality. See Wise Shoe Co. v. Town of Exeter, 1991 N.H. 700, 702 (1979); Brickman v. City of Manchester, 119 N.H. 919.

Based on the evidence we find the correct assessment should be \$260,000 (land, \$143,250 and building \$116,750). This assessment is ordered because:

- (1) the Taxpayer presented credible evidence of the Property's value, but we did not accept the 20% reduction for economic conditions;
- (2) the subdivision's covenants may have some benefit, but they are so restrictive they most certainly have a chilling effect and they most certainly greatly constrict the number of potential buyers;
- (3) the lack of sales in the subdivision supports the conclusion that the marketability of the lots was negatively affected or, at least, overpriced;
- (4) belonging to the association, however, enhances the Property's value to some extent because the amenities run with the land;
- (5) the two sales used by the Town were not strong evidence because one was in December, 1987 and one was for an improved lot, and moreover, both sales were early on in the development and the lack of subsequent sales makes those sales somewhat suspect; and

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(6)the Town's undeveloped adjustment used in calculating the basic-site value
in this was excessive.

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The board reviewed all of the evidence and made certain adjustments to get a range for the assessment. First, we recalculated the Town's basic-site value, using .9 for the undeveloped factor rather than .6, resulting in \$263,050 (\$139,280 basic site, plus \$7,000 for excess land, and plus \$116,750 for building). We also took the Taxpayer's \$220,000 and added back the 20% for the economic condition factor, resulting in a \$264,000 value and a \$274,560 assessed value. The board also gave weight to the Dluzniewski sale of \$189,500, which had more land but somewhat less dramatic views. The Taxpayer's expert opined the adjustments resulted in a \$223,422 value for the Property or a \$232,360 assessed value. While the Dluzniewski property does not enjoy the same views, we doubt any buyer would pay approximately \$100,000 more for the Property even after adjustments were made to the Dluzniewski price (or \$141,250 before any adjustments). Given this, we found an assessment of \$260,000 was proper.

We note that the Town's methodology was not necessarily flawed. The error was in not considering the negative effect of the covenants as shown by the lack of sales.

If the taxes have been paid, the amount paid on the value in excess of \$260,000 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Bradley R. Thayer, taxpayer; and Chairman, Selectmen of Dalton.

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Date: April 3, 1992
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Valerie B. Lanigan, Clerk