Barbara A. and William H. O'Brien, Jr.

v.

Town of Alexandria

Docket No.: 10536-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 adjusted assessment of $135,700 (land $47,700; buildings $88,000) on Map 8, Lot 614, a 13-acre lot with a single-family home (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is denied.

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 failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

(1) the Property's road is not maintained by the Town;

(2) a $27,000 value was applied for the view and a $10,000 value was applied for the septic system and artesian well, which are excessive;

(3) properties in the area which have maintained roads and views were given the same site value as the Property; and

(4) the site values do not reflect fair market value of properties throughout the Town, i.e., views and woodland acreage, even with site adjustments.

The Town failed to submit any arguments to support the assessment. The Town adjusted the land value for site and acreage, resulting in the revised 1990 assessment of $135,700.

The board's inspector reviewed the assessment-record card, reviewed the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded that no additional adjustments were warranted, and the Town's adjusted assessment was proper. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove their assessment was disproportional because:

1) the Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers 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 assessments 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. at 217-18; and

2) the Taxpayers showed differences between the calculation of their

assessment and others but did not prove that those differences would not be recognized in the market;

3) the Taxpayers stated they were told the septic was assessed for $10,000 and the well for $10,000; however the board finds no evidence of separate well and septic values on the property-record cards;

4) the Town did adjust the house site by 15% for being on an unmaintained road; and

5) while the Taxpayers argument of not owning the Property that affords them their view could influence their market value, the Taxpayers did not submit any evidence on how quick the view could be lost due to regrowth of cut trees or how the present value of their Property is impacted by the potential for diminishing future benefits (view).

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

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Barbara A. & William H. O'Brien, Jr., Taxpayers; and Chairman, Selectmen of Alexandria.

Melanie J. Ekstrom, Deputy Clerk

Date: June 11, 1993
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