Peter L. and Estelle Merzi

v.

Town of Greenfield

Docket No.: 8792-90

DECISION

The "Taxpayers" appeal pursuant to RSA 76:16-a, the "Town's" 1990 assessment on two lots: $198,900 on Lot 38-1 (land - $88,450, buildings - $110,450) consisting of a single-family residence and two barns on a 7.8-acre lot; and $78,050 on Lot 38 (land - $52,900, buildings - $25,150) consisting of a single-family residence with garage on a 1.5-acre lot (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 granted for both lots.

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 on Lot 38-1 was excessive because:

1) the Property has high bankings, and 5 acres is a dugout sandpit;

2) the Property cannot be subdivided;

3) they are being penalized for frontage; and

4) the property across the road has 18.3 acres, frontage on 2 roads, and some wetlands and their land value is $17,150 less than the subject Property.

The Town argued the assessment on Lot 38-1 was proper because:

1) a 25 percent depreciation for topography was considered in the assessment;

2) the Property has subdivision potential with 588-foot frontage; and

3) the buildings are in very good condition.

The Taxpayers argued the assessment on Lot 38 was excessive because:

1) the Property is long and narrow with steep banks and sandpits;

2) the house is only 16 x 34 and contains no closets, cabinets, showers, heat, or insulation;

3) the house is very close to the road; and

4) the correct assessment should be $22,600.

The Town argued the assessment on Lot 38 was proper because:

1) the front-foot method was used in valuation, which is consistent throughout the Town; and

2) 10 percent depreciation was given for the house proximity to the road, 25 percent was given for topography, and 25 percent for the house condition.

Board's Rulings

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

Based on the evidence submitted for Lot 38, we find the correct assessment should be $74,350 (land - $52,900, buildings - $21,450). On Lot 38-1, the board finds the correct assessment should be $188,200 (land - $77,750, buildings $110,450).

The board's inspector reviewed the file and property tax cards for each lot, and filed a report with the board. The report on Lot 38 concluded that additional physical and functional depreciations were needed for the condition

of the house. The report on Lot 38-1 concluded that an additional 20 percent adjustment was necessary given the condition of the land. The board has concluded the inspector's report was the best evidence available to it.

We find the Taxpayers proved the Property's assessment was disproportional. If the taxes have been paid, the amount paid on the value in excess of $74,350 on Lot 38, and $188,200 on Lot 38-1 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Peter L. and Estelle Merzi, Taxpayers, and Chairman, Selectmen of Greenfield.

Dated: October 27, 1992

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Melanie J. Ekstrom, Deputy Clerk