

Frederic and Diane S. Porfert

v.

Town of Belmont

Docket No.: 11011-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$36,900 (land only) consisting of 3.1-acres (the Property). The Taxpayers' own but did not appeal, Map 15-43 for a total assessment of \$77,000.

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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Property was purchased in December, 1990 for \$22,000;
- (2) the Property was appraised in June, 1990 with an estimated fair market value of \$26,000 with a distressed value estimated at \$18,000;

- (3) the Property was raw land only with no improvements; and
- (4) the Property's assessment was more than the fair market value, especially since it was the start of a declining market.

The Town argued the assessment was proper because:

- (1) the previous owners had purchased the Property in June, 1988 for \$35,000 and the Property was foreclosed on in August, 1990;
- (2) the December 8, 1990 purchase price of \$22,000 was not an arms-length transaction, as it was sold by the bank that had foreclosed on the Property;
- (3) the Property was a buildable lot under current zoning;
- (4) the June, 1988 sale was appraised as part of the Town-wide revaluation and was considered an arms-length transaction; therefore, the Property was properly appraised; and
- (5) even though the market has declined, to lower the Taxpayers' assessment would represent a disproportionate value to other taxpayers in Town.

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 the assessment was proper. Note: The inspector's report was 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. In this case, the board did not rely on the inspector's report.

Board's Rulings

Based on the evidence, we find the Taxpayer failed to prove the Property was disproportionately assessed. The Taxpayer testified the Property's purchase price was \$22,000 in December, 1990. While this is some evidence of the Property's market value, it is not conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). The Town argued that the sale of the subject was not an arms-length transaction because the Taxpayers purchased the Property from a bank who had foreclosed on the previous owner. The sales made to satisfy delinquent loans are not "arms length" due to the pressure to sell; consequently, while these accelerated sales will affect the market value of those who choose not to sell, they alone do not define the market.

The Taxpayer submitted an appraisal report dated June 26, 1990, which estimated a fair market value of \$26,000. The appraisal was prepared for "use in possible foreclosure proceedings" and does not make any adjustments to arrive at a value, as of April 1, 1991. However, the board has reviewed the appraisal report and taken into consideration the sale of the Property and finds a fair market value as of April 1, 1991, of \$29,500. Neither party challenged the Department of Revenue Administration's equalization ratio of 1.26 for the 1991 tax year for the Town of Belmont. This indicates that all real estate was assessed 26% above market value in 1991. The fair market value of \$29,500 equalizes to \$37,170 ($\$29,500 \times 1.26\%$) which falls slightly above the assessed value set by the Town; therefore, the board denies

the appeal for abatement.

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The board must comment on the Town's brief. 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).

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 Frederic and Diane S. Porfert, Taxpayers; and Chairman, Selectmen of Belmont.

Dated: November 19, 1993

Melanie J. Ekstrom, Deputy Clerk

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