

Robert W. and Jessie L. Simpson

v.

Town of Bow

Docket No.: 11318-91PT

DECISION

The "Taxpayers" appeal pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$234,250 (land, \$98,550; building, \$135,700) on 2-acres with building (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.

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' carried their burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) the Property was rented until September, 1991 as a buyer could not be found;
- 2) an offer of \$167,500 was accepted, but fell through;

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- 3) the Property sold for \$172,500 in June, 1992; and
- 4) the sale was not under duress as the Taxpayers' employer was making the house payments.

The Town argued the assessment was proper because:

- 1) the sale was not a fair market sale as the Taxpayers had moved and were eager to sell; and
- 2) the Property is in an excellent location with views and if it had been owner occupied and met all criteria for a fair market transaction, would have sold between \$220,000 and \$230,000.

Prior to deliberation, one of the board's inspectors 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.

During its deliberations, the board concluded that an on site review of the Property by its inspector would be appropriate. Consequently a second report was filed by the board's new inspector which concluded that the proper assessed value was in a range between \$215,000 and \$225,000 (copy also enclosed).

Note: Both inspector's reports are not appraisals. The board reviews these reports and treats the reports as if they were other evidence giving them the weight they deserve, thus the board may accept or reject the inspectors' recommendations.

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Board's Findings

The board finds that the best evidence of the proper assessed valuation is the board's second inspector's report filed on November 5, 1993. Consequently the board rules that the proper assessed valuation of the Property should be \$220,000.

This assessment is ordered because:

- (1) the Property is disproportionately assessed based on the market data submitted in the board's second inspector's report;
- (2) the sale of the Coorssen property across the street for substantially more than the Taxpayers' sale casts a shadow on the Taxpayers' sale being a good indication of market value. See Appeal of Lakeshore Estates, 130 N.H. 504 (1988) (if other market evidence exists to show the sale of the subject Property does not conform to the general market, then the sale is not conclusive evidence of value).

If the taxes have been paid, the amount paid on the value in excess of \$220,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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.

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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 that a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert W. and Jessie L. Simpson, Taxpayers; and Chairman, Selectmen of Bow.

Dated: December 21, 1993

Melanie J. Ekstrom, Deputy Clerk

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BOARD OF TAX AND LAND APPEALS
REVIEW APPRAISER'S WORKSHEET

Town Name: Bow

Docket #: 11318-91PT

Owner's Name: Robert W. and Jessie L. Simpson

Property Address: 2 Buckingham Drive

Property Type: Single-Family Residence

Total Assessment: \$234,250

Building Assessment: \$135,700

Land Assessment: \$98,550

DRA's Ratio: 1.02

COD: 7.65%

Equalized Total Assessment: \$229,657

Eq. Building Assessment: \$133,039

Eq. Land Assessment: \$96,618

Gross Building Area(GBA): 2,268 sf

Total Land Area(TLA): 2.00 acres

Type of Review: Exterior

Date of review: October 28, 1993

Report Submitted: November 5, 1993

Comments: The subject property is located at 2 Buckingham Drive in Bow, New Hampshire. It is a single-family residence. The house is a 2-story colonial, with 2,268 square feet of living space, 2½ bathrooms and a 600 square foot attached garage. The lot contains 2.00 acres of land with 391 feet of road frontage. The majority of the topography is level and gently sloping.

The Taxpayer argued the assessment was excessive because:

- 1) the Property was rented until September 1991 as a buyer could not be found;
- 2) an offer of \$167,500 was accepted, but fell through;
- 3) the Property sold for \$172,500 in June 1992; and

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- 4) the sale was not under duress as the employer was making the house payments.

The Town argued the assessment was proper because:

- 1) the sale was not a fair market sale as the Taxpayers had moved and were eager to sell; and
- 2) the Property is in an excellent location with views and if it had been owner occupied and met all criteria for a fair market transaction, would have sold between \$220,000 and \$230,000.

The taxpayer has based his entire argument on the actual selling price of and the attempt to sell his own house. Assessments are based on fair market value and while fair market value is estimated using the actual sales of properties, fair market value does not always equal selling price. The taxpayer contends that the sale was not made under distress and represents fair market value. The town contends that the taxpayer was eager to sell and the sale does not represent fair market value.

A review of five neighboring properties revealed that 1 Buckingham Drive, located across the street from the subject, was purchased by Gary C. Coorssen for \$226,000 on November 26, 1990. I spoke with Mr. Coorssen on November 5, 1993. He confirmed that he purchased the property for the above price and was not under any duress to purchase the property. He did indicate that he felt the price paid was higher than fair market value, but he was willing to pay the price as he "wanted the property."

The Coorssen property is very similar to the subject. It has 2.3% more living space than the subject and a slightly superior design and appeal, 2 bathrooms, the same amount of land as the subject and a basement garage as opposed to an attached garage. Based on my review of the two properties, it is my opinion that the Coorssen property is slightly superior and would sell by 3% to 6% more than the subject property. Reducing the sale price by these amounts would indicate a range of value of \$212,400 to \$219,220. Adjusting these figures by the equalization ratio of 1.02 indicates a fair assessment of \$216,650 to \$223,600.

It should be noted that in 1991, the Coorssen property was assessed at \$239,800, which, on a direct assessment to assessment comparison, would indicate that the subject property is fairly assessed. However, the Coorssen property's assessment was reduced to \$226,250 in 1992.

An analysis of the five neighboring properties' 1991 assessments in comparison to the subject property's (spreadsheet attached) indicates that the

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subject property is properly assessed. Three valuation indicators were examined; assessment per usable square feet, assessed building value per usable square feet and assessed land value per acre. In all three instances, the subject property's values fall below the median value and the average value. It should be noted that the assessments of 4 of the 5 neighboring properties and the subject property were reduced by 5.7%± in 1992. The 1992 assessment of the subject property is \$220,950.

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Conclusion: Based on the information that has been provided by the taxpayer and the Town, and based upon my experience as a real estate appraiser, it is my opinion that the fair assessed value of the subject property as of April 1, 1991 is between \$215,000 and \$225,000.

Very truly yours,

Scott W. Bartlett
Board of Tax and Land Appeals
Review Appraiser