

Frank L. DeMoria

v.

Town of Pittsfield

Docket No.: 11431-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$41,800 (land only) on an 8.9-acre lot (the Property). The Town did not appear but consistent with our Rule, TAX 202.06(h), the Town was not defaulted. This decision is based on the evidence presented to the board. 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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried his burden.

The Taxpayer argued the assessment was excessive because:

- (1) the Property cannot be sold for the assessed value;
- (2) the Property was marketed for \$18,000 in late 1991 but the broker advised the price was too high;
- (3) an offer of \$15,000 was made but not accepted in March 1992; and

(4) the realtor estimates the value now to be between \$10,000 to \$15,000.

The Town did not present any evidence.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$23,600, which equates to a \$20,000 market value multiplied by the equalization ratio (1.18). The Taxpayer's unrefuted evidence of his attempts to sell the Property through realtors proved overassessment. Specifically: 1) the late 1991 \$18,000 asking price; 2) the early 1992 \$15,000 purchase and sales agreement; and 3) the unsuccessful efforts to sell the Property.

If the taxes have been paid, the amount paid on the value in excess of \$23,600 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, 1993 and 1994. 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.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited

circumstances as

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stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Frank L. DeMoria, Taxpayer; and Chairman, Board of Selectmen of Pittsfield.

Dated: July 11, 1995

Valerie B. Lanigan, Clerk

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