

John and Barbara Windhurst

v.

Town of Hopkinton

Docket No.: 11472-91-PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 adjusted assessment of \$315,050 (land, \$110,500; buildings, \$204,550) on a 8.5-acre lot with four-unit apartment building (the Property). The Taxpayers also own, but did not appeal, another lot in the Town with a \$235,400 assessment. 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 this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) an April 1, 1994 appraisal estimated a \$265,000 value;
- (2) the Property has been on the market without any prospective buyers and is currently listed at \$210,000 (without all the land) (The Property was listed for \$315,000 in 1993.);

- (3) several realtors opined the Property was worth less than the assessment;
- (4) the additional frontage is swampy because of a gully;
- (5) the backland cannot be subdivided because the total road frontage is only 336 feet. (Town zoning requires 200 feet per lot);
- (6) subject building has four apartments (grandfathered) located in a general residential district;
- (7) the structure was built circa 1790 as a single-family residence and suffers more functional depreciation because of poor interior layout than has been given by the Town; and
- (8) an additional -10% economic factor should be allowed for poor topographic features which would make subdivision highly unlikely.

The Town argued the assessment was proper because:

- (1) the Property has subdivision potential, possibly by subdividing the back acres and selling to the school;
- (2) an adjustment (-\$1,800) might be warranted for the lot size given the new tax maps;
- (3) the time-adjusted appraisal, even using the 1993 DRA ratio, results in a \$300,000 value;
- (4) it was arrived at using the same methodology used by the Town and was supported by other assessments; and
- (5) the Town relied on 12 comparable improved properties.

The Town also argued the Taxpayers' appraisal could not be relied upon

because it was not an independent analysis but rather used some of the DRA

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figures and calculations. Additionally, the Taxpayers' appraiser estimated a value for 1994, yet he used the 1990 DRA cost manual.

Board's Rulings

The board rules the correct 1991 total assessment for land and building on the Property should be \$250,000.

The board was unable to satisfy a number of concerns based on evidence and testimony at the hearing and therefore chose to send its review appraiser/inspector to view the Property and a number of comparables and to file his report with the board. Copies of his report were sent to both parties.

The board finds the 1993 equalized ratio of 113% to be appropriate for 1994 prospectively, based on testimony at the hearing. The Taxpayers submitted six comparable properties three of which were on Main Street in relatively close proximity to the subject. Conversely, none of the 12 comparables used by the Town were on Main Street or in the immediate neighborhood of the subject.

Mr. Cutting, testifying on behalf of the Taxpayers, submitted a narrative appraisal and found a total market value as of April 1, 1994 of \$265,000 (with no time adjustment to April 1, 1991). The appraiser did, however, estimate that "for a 2 year period from June 1992 to June 1994, the market declined at a rate of 1/2% per month." Two "opinion of value" letters from Wiita Family Realty and Colby Realty suggested listing prices in the low \$200,000 range and \$250,000 respectively.

The board places the greatest weight on the report of its review appraiser/inspector who in a 25 page narrative appraisal, using three approaches to value, found the following range:

Cost Approach	\$243,000
Market Comparison Approach	\$247,300
Income Capitalization Approach	\$212,400

He recommended a range of \$220,000 to \$260,000.

The board is not obligated or empowered to establish a fair market value of the Property. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine whether the assessment has resulted in the Taxpayers paying an unfair share of taxes. See Id. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). However, the existing assessment process

allocates the total value between land value and building value. (The board has not allocated the value between land and

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building, and the Town shall make this allocation in accordance with its assessing practices.)

If the taxes have been paid, the amount paid on the value in excess of \$250,000 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, 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 law. Thus, new evidence and new arguments are only allowed in very limited circumstances as 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.
SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John and Barbara Windhurst, Taxpayers; Mary E. Pinkham-Langer, Agent for the Town of Hopkinton; and Chairman, Selectmen of Hopkinton.

Dated: March 3, 1995
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Valerie B. Lanigan, Clerk