

Harrison Nelson Thibault, Jr.

v.

Town of Hopkinton

Docket No.: 11518-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 adjusted assessment of \$120,300 (land \$62,100; buildings \$58,200) on a .97-acre lot with a house (the Property). The Taxpayer 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 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 and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Property is located in a flood plain and has no paved road, no mail delivery or cable service, and secondary plowing;

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(2) in 1988, the Taxpayer paid \$10,000 more for the Property than the bank's appraised value of \$125,000 because the Taxpayer was already renting the Property and his wife's physical condition made it easier to stay than to move;

(3) a bank appraisal in March, 1992 estimated a \$101,000 value;

(4) superior properties, river-front properties and properties with better Town services have lower, front-foot values than the Property;

(5) the Town ignored its own land-value survey when setting the front-foot values, and the front-foot value should be \$225 to \$250;

(6) the Property's neighborhood is similar to East Penacook Road and located only 225 feet away from that road, yet the front-foot values differ by \$175; and

(7) when the Property's true 1988 market value (\$125,000) is time adjusted to April 1, 1991, the indicated value of \$113,871 is more realistic.

The Town argued the assessment was proper because:

(1) the Taxpayer's appraisal is flawed because the appraiser's adjustments were inaccurate and unsubstantiated, bank sales were used, and two comparables were located outside the Town;

(2) larger homesites have lower, front-foot values;

(3) even though the Taxpayer's comparable sales were from different neighborhoods, the sale prices were within 10% of the assessed values;

(4) the Taxpayer's 1988, \$135,000 purchase price, when time adjusted to April 1, 1991, equates to a \$123,507 value;

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- (5) the Property was assessed equitably with abutting properties; and
- (6) the Property has a private location next to the river.

The board's inspector reviewed the assessment-record card and 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 adjusted assessment was proper. Note:

The inspector's report is 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.

Board's Rulings

Based on the evidence, the board finds the correct assessment should be \$110,000. 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 building, and the Town shall make this allocation in accordance with its assessing practices.)

The Taxpayer's argument focused on two areas:

- (1) the base front-foot price of \$300 assessed the Property was

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disproportionate to other properties; and

(2) the Taxpayer's purchase price in 1988 and a 1992 appraisal for \$101,000 showed disproportionality.

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The board finds that the Taxpayer's challenge to the front-foot price did not fulfill the Taxpayer's burden of showing that the total land and building assessment was disproportionate relative to its market value. Based on the evidence, the Property appears relatively unique due to its setting on a short, dead-end road with a view of the Contoocook River on the other side of the road. The Town noted on its assessment-record card that the Property has a nice, private setting next to the river. While there were no sales of property similar to the Taxpayer's Property, the board does not find the assessment methodology beginning with \$300, per-front-foot to be unreasonable based on the physical and value-influencing setting of the Property.

However, the board finds that both the Taxpayer's 1992 appraisal and his purchase of the Property in 1988 generally support a finding of \$110,000. In his rebuttal, the Taxpayer adjusted for time a 1988 appraised value of \$125,000 (the Taxpayer purchased the Property for \$135,000 and indicated that he overpaid by \$10,000 as they were the renters at the time) to arrive at an indicated 1991 market value of \$113,871. The board finds that the Taxpayer's purchase of the Property for \$135,000 in 1988 was unduly influenced by the Taxpayer being a tenant of the Property. Consequently, an estimate of market value of \$125,000 in 1988 is reasonable. Similarly, the Town, while it had some reservations about the Taxpayer's appraisal, adjusted the 1992 appraisal for time back to April, 1991, and arrived at an indicated value of \$108,000.

Further, the board notes that the change in the equalized ratios from 1988 to 1990 (42% to 48%) indicated the general real estate market in

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Hopkinton declined approximately 14% ($6\% \div 42\%$). The 1988 value of \$125,000 when adjusted by the 14% decline indicates a market value for 1990 of \$109,650 ($\$125,000 \div 1.14$). A further adjustment to 1991 based on equalization ratios is not possible due to the reassessment being performed in 1991.

The board finds these various indications of market value all generally support a lower assessed value, especially for a Property that may have some unique valuation factors about it that are difficult to include in a mass-appraisal system employed by the Town during the reassessment. The board notes the Town's objections to the 1992 appraisal and gives them some weight; however on balance of all the evidence, the board finds a lower assessment is proper.

If the taxes have been paid, the amount paid on the value in excess of \$110,000 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.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A

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reconsideration 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 stated in board rule TAX 201.37(e). Filing a reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Harrison Nelson Thibeault, Jr., Taxpayer; and Chairman, Selectmen of Hopkinton.

Dated: May 4, 1993

Lynn M. Wheeler, Deputy Clerk

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