

James R. and Ann O. Schoettler

v.

Town of North Hampton

Docket No.: 12185-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$201,500 (land \$70,700; buildings \$130,800) on a 2.01-acre lot with a house in Country Club Estates (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 built as a "spec" house and lacks the quality construction found in other homes;

- (2) the Property was purchased in August 1991, for \$296,000 after being on the market for over a year;
- (3) to date, the Taxpayers have incurred \$7,235 for repairs, including repairs due to radon;
- (4) the land is ledgy and lacks landscaping and a driveway, and should be assessed at the low end of the eleven other lots in the development;
- (5) the Town's \$325,000 land sale abuts a \$2,000,000 home, is only one block from the ocean, and is surrounded by country club grounds;
- (6) comparable sales demonstrated overassessment; and
- (7) the assessment should be \$165,000, and the taxes should be equitable with the entire Town not just with the neighborhood.

The Town argued the assessment was proper because:

- (1) the Taxpayers' purchase was not an arm's-length transaction, and no arm's-length transactions in the development involved a property that sold for under \$400,000;
- (2) a 1993 MLS showed two properties in the development that listed for \$589,000 to \$895,000, and these prices were lower than 1991 prices because real estate values have steadily declined;
- (3) the land values were established in 1986 when the development was established, and lots sold for \$124,500 and were assessed at \$68,400 to \$74,850; and
- (4) the Taxpayers' comparables, after adjusting for time, size, quality, and third party sales, support the Property's assessment.

The board's inspector, reviewed the property-assessment 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 proper assessment should be between \$173,250 and \$192,500. 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. In this case, the board has not accepted the inspector's ultimate recommendation because his conclusion does not coincide with the board's review and the board's judgement concerning the Property's value.

Board's Rulings

Based on the evidence, the board finds the correct assessment should be \$194,960 (land \$70,700; building \$124,260), which equates to a \$354,450 equalized value (assessment divided by equalization ratio of .55).

The board has spent a considerable amount of time reading, reviewing, and rereading this file. That is why we sent our inspector out. However, after receiving his report and the parties' comments to the report, the board still was unable to reach a clear conclusion in this case. Thus, we must return to the starting point -- the Taxpayers have the burden of proof. Therefore, because we are not convinced that the Taxpayers carried their burden, we have only made a reduction to the building's assessment due to the problems with the moisture that causes the paint to peel.

Turning to the evidence, we make the following observations:

1) the Taxpayers bought the Property in August 1991 for \$296,000. At a minimum, two adjustments are required to equate that value to an April 1, 1991

market value: a) time adjustment of +4% since the market was falling from

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April to August, and b) an adjustment due to the bank sale. The time adjustment results in a value of \$307,840 ($\$296,000 \times 1.04$). This time-adjustment is easily calculated by comparing the equalization ratio from 1991 to 1992. The second adjustment -- for the bank-sale factor -- is not so easily calculated. Nonetheless, some adjustment is warranted because banks are not your typically motivated sellers and because the board has consistently seen, both through its own studies and the studies of others, that bank sales typically sell for less than market sales. A minimum adjustment of +10% would result in a \$338,624 value, and +20% adjustment would result in a \$369,410 value. However, based on the evidence, the board was unable to conclude what adjustment would be most appropriate.

2) the Taxpayers submitted four sales of neighborhood properties. The Taxpayers, however, did not make any adjustments to those sales, but the Town did. The Town's analysis demonstrated that the Property's equalized assessment was in line with neighborhood sales once those neighborhood sales were adjusted for the differences between the comparables and the Property and once the sales were adjusted because they were bank sales.

3) Based on the photographs, the property record card, and the neighborhood, the board concludes the Property is a class 4 property.

4) Some adjustment is required for the moisture problem that causes the paint to peel. Therefore, the board has reduced the building assessment by 5%, and this is the basis for the ordered assessment.

To reiterate, the board spent a considerable amount of time reviewing

this file and all the information provided by the parties. However, we were

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unable to find that the Taxpayers showed disproportionality to the extent asserted by the Taxpayers.

The board reviewed our inspector's report. The board, however, finds the report did not add sufficient information to warrant a reduction in the assessment further than has been ordered. Finally, we point out that the equalized value based on the ordered assessment is within \$4,000 of the inspector's high-end figure.

If the taxes have been paid, the amount paid on the value in excess of \$194,960 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 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

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on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

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 James R. and Ann O. Schoettler, Taxpayers; and Chairman, Selectmen of North Hampton.

Dated: December 6, 1994

Lynn M. Wheeler, Deputy Clerk

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