

Paul E. and Karen Pollock

v.

Town of Bow

Docket No.: 12246-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$262,650 (land \$95,600; buildings \$167,050) on a 2.04-acre lot with a house (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 denied.

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 failed to carry their burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) part of the lot cannot be used because of its steepness and irregular shape;
- (2) a 1989 appraisal estimated a \$230,000 market value, and a 1992 appraisal

estimated a \$225,000 value;

(3) similar properties in the neighborhood were assessed much lower than the Property; and

(4) the assessment should be \$230,000.

The Town argued the assessment was proper because:

(1) the Property has mountain views, while both the Capital appraisal and Taxpayers' comparables mention no views;

(2) the Property was assessed equitably with similar lots in the neighborhood; and

(3) the Taxpayers' comparables were not comparable because they were located in different neighborhoods, and one was a foreclosure sale (#3), which was given a somewhat arbitrary \$30,000 positive adjustment.

Board's Rulings

Based on the evidence, the board notes that the subject is a contemporary style home, while the comparables used by both the Taxpayers and the Town are (Otis) a garrison, (Eldridge) a cape, and (Pond) a colonial. The Town asserts that the subject enjoys mountain views, while the Taxpayers' appraiser makes no distinction for views in his comparables. Further, adjusting the three comparable sales in the Taxpayers' 1992 appraisal back to the assessment date of April 1, 1991 using the trending rates of the appraiser results in indicated market value estimates of \$271,250, \$257,600 and \$248,530, respectively. This recalculation of the Taxpayers' appraisal supports the Town's assessment. In response to the Town's point that the Taxpayers' appraiser's comparables are all 2.5+ miles from the subject, the Taxpayers reply, "Use of comparables over 1 mile distance from the subject is typical in small southern New Hampshire communities where the entire town is considered the neighborhood. The entire town offers similar access to local

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amenities and the purchaser of a similar property would consider the entire town equally when purchasing a property similar to the subject. Therefore, the distance from the comparables is not an adverse factor."

Further, adjusting the three comparable sales in the Taxpayers' 1992 appraisal back to the assessment date of April 1, 1991 using the trending rates of the appraiser results in indicated market value estimates of \$271,250, \$257,600 and \$248,530, respectively. This recalculation of the Taxpayers' appraisal supports the Town's assessment.

The Town supports the subject Property's assessment with a comparable dwelling chart of four Tonga Drive properties (including the subject).

The Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

The Taxpayers raised concerns about certain errors in the assessment. However, the Taxpayers did not show these errors resulted in disproportionality. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

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

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

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Paul E. and Karen Pollock, Taxpayers; and Chairman, Selectmen of Bow.

Dated: June 16, 1994

Lynn M. Wheeler, Deputy Clerk

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redated and recertified June 30, 1994