

Donald J. & Dorothy A. Bowler

v.

Town of New Hampton

Docket No.: 12377-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$178,500 (land \$117,400; buildings \$61,100) on a salt box-style house on a 2.74 acre lot (the Property). 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) the shoreline is steep on the Property compared to lot 10 which has a nice beach and sold in June 1995 for \$54,000;
- (2) the house should be a 1 and 1/2 story rather than 1 and 3/4 story; and
- (3) the sale of lot 14 in 1992 for \$212,000 while being assessed for \$267,900 indicates the assessments were generally high.

The Town argued the assessment was proper because:

- (1) the story height and the cathedral ceiling are further adjusted in the functional depreciation;
- (2) the sale of lot 14 on Sept. 18, 1992 for \$212,000 indicates a ratio of 125% similar to the town-wide ratio of 121% for that time period;
- (3) the sale of lot 10 did include a nice beach area but also has a small stream that would be an issue when built upon.

Board's Rulings

Based on the evidence, we find the Town has supported the 1991 assessment as calculated.

The reduced floor space on the second floor (cathedral ceiling) is offset by the functional depreciation given to the story height of $1\frac{3}{4}$.

The Taxpayers' methodology is flawed when the difference between the Town's valuation and the sale price of lot 14 is subtracted from the Town's valuation of the land for lot 14. This is a classic example of apples and oranges. Further, the 1992 sale of lot 14 generally corresponds with the 121% level of assessment in 1992.

The issues in this case are relatively straightforward and had some review taken place at the local level between the Town and the Taxpayers, a strong possibility exists that a withdrawal of this appeal may have resulted saving the Town the cost of litigation and the Taxpayers the cost of application for appeal and time to attend the hearing.

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; Page 3

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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 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

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 Donald J. & Dorothy A. Bowler, Taxpayers; and Chairman, Board of Selectmen of New Hampton.

Dated: July 11, 1995

Valerie B. Lanigan, Clerk

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Donald J. & Dorothy A. Bowler

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ORDER

This order responds to the Taxpayers' request for rehearing filed August 7, 1995 with the board. For the reasons that follow the board denies the request and responds further to the items raised by the Taxpayers.

Items 1, 2 and 3. The board finds the Town's functional depreciations of 25%, as testified to by the Town, includes consideration not only for the unfinished areas but for the cathedral ceiling design of the house. It is the board's experience that story heights are not solely determined by the percentage of second floor living area (although that is a factor) but also is influenced by the height and configuration of the framing materials of the house. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence). In this case the board finds the 1¾ story height description with some functional depreciation is reasonable.

Item #4. The board finds the Taxpayers' methodology of attributing the difference between the Town's assessed value of \$267,000 and the sale price of

\$212,000 of the Taxpayers' comparable all to the land value is an incorrect methodology. The sale price of \$212,000 indicates a general decline in the market from what the Town's assessment indicated. Such a decline occurs to some extent between both the land and the improved portions of the Property. The Taxpayers are correct, however, in that the board did inadvertently apply the 1993 ratio to this September 1992 sale. However, the board finds this does not affect its final conclusion. The 1991 ratio of 102% was derived from 22 sales analyzed by DRA. The 102 ratio is the median ratio. Thus, half the sales fall above the 102% midpoint and eleven fall below. The Taxpayers' comparable was one of the sales that fall above the median ratio. DRA also determined the mean ratio is 110% and the coefficient of dispersion is 18.12%. These two additional statistical measurements indicate that it is difficult to place much reliance on one sale without a comparative analysis of how that sale compares with the subject Property - which the Taxpayers did not submit. Simply put, just because one Property was assessed higher than what it sold for does not necessarily indicate that other properties are overassessed.

Item #5. The board finds the relative sale prices of the subject Property and the Taxpayers' comparable lot 10 when they sold originally in 1977 and 1978 is too dated to be of probative value for a 1991 appeal. Likewise, the sale of lot 10 in 1995 is too removed from the assessment date to be of much probative value.

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 Donald J. & Dorothy A. Bowler, Taxpayers; and Chairman, Board of Selectmen of New Hampton.

Date: September 15, 1995

Valerie B. Lanigan, Clerk

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