

Margaret A. Arborio

v.

Town of Alexandria

Docket No.: 12431-91 PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$128,900 (land \$89,400; buildings \$39,500) on a 36-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 this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property is wet and swampy;
- (2) a PSNH right-of-way runs through the middle of open land; and
- (3) a realtor estimated only a \$65,000 value in October, 1991, because the building was in severe disrepair.

The Town was finally defaulted and, thus, the board did not rely on the Town's submittals.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$96,700 (land \$66,250; building \$30,450). This assessment is ordered because:

- 1) both the Taxpayer's and the realtor's description of the Property differs significantly enough from the listing on the assessment-record card to warrant adjustments for the physical nature of the house and the topographical and subdivision potential of the land;
- 2) based on the evidence, the dwelling should receive a -40% physical depreciation and -30% functional depreciation for physical condition of the house and the various components that need to be updated to be functional (not only did the Taxpayers evidence support this, but the checkoffs on the building's side of the assessment-record card indicated poor layout and inadequacies to the building);
- 3) the description of the land and the sketch supplied by the Taxpayer indicates that the Property has limited subdivision potential due to either wetness or powerline easements; therefore, the seven acres of additional frontage assessed by the Town should be reduced in half by applying a site-adjustment factor of .25, as opposed to .50, resulting in a land value of \$66,250; and
- 4) while the Taxpayer's realtor's opinion of value is better than many seen by the board, because of the realtor's reference to comparable properties and description of the differences between the comparables and the subject

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property, the board was unable to find it conclusive evidence of market value due to its brevity and lack of comprehensive market data and adjustments.

If the taxes have been paid, the amount paid on the value in excess of \$96,700 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.

Motions for reconsideration of this decision must be filed within thirty (30) days of the clerk's date below, not the date received. RSA 541:3. The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Margaret A. Arborio, Taxpayer; and Chairman, Selectmen of Alexandria.

Dated:1/24/94

Lynn M. Wheeler, Deputy Clerk

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