

Thomas E. and Claudia R. Sahrman

v.

Town of Hopkinton

Docket No.: 12841-92-PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 adjusted assessment of \$285,600 (land, \$133,100; buildings, \$152,500) on a 10.7-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) the Property is on a steep, gravel road and the above-ground electric lines result in frequent power outages;

- (2) the Property is ledgy, steep and wet and the driveway is 500-feet long;
- (3) the Property abuts a power-line easement with three steel towers, one of which is only 300 feet from the front door;
- (4) the building's center-chimney construction limits the living space and there is no provision for garage construction; and
- (5) based on sales of comparable properties, the Property's assessment should be \$161,980.

The Town adjusted the assessment to address the building's heat and story height. The Town argued the adjusted assessment was proper because:

- (1) the Taxpayers' comparables were not comparable in lot size, building size, neighborhood type or construction quality, some of the comparables were located in Concord, and one home was gutted by fire;
- (2) a comparable sale across the street from the Property was assessed at \$459,650 and sold for \$530,000 in April 1993;
- (3) the Property is a fully restored, 200-year-old colonial saltbox that sits on a large, private lot; and
- (4) the Property is located in one of the most desirable areas in the Town.

Board's Rulings

The board finds the Taxpayers failed to carry their burden for several reasons.

First, the board finds the Taxpayers' methodology in arriving at their recommended assessment of \$161,980 is flawed. The Taxpayers arrive at this recommendation based on an analysis of the sales of six properties that

occurred from 1989 to 1992. The Taxpayers determined a combined land and building value per-square-foot by simply dividing the unadjusted sale price by the square footage of living area. The only adjustment the Taxpayers made was to increase the final average square-foot price by approximately 1% to reflect the "differences in building lot sizes and building configuration." The board finds the Taxpayers made no adjustments for the date of sale, the lot size or the location and quality of the lot or house. Of these factors, the most striking is the general difference in quality of the Taxpayers' house compared to the comparable sales. The Taxpayers' house is a 200-year-old center-chimney saltbox that was moved from Massachusetts and reconstructed on the lot in Hopkinton. The house retains many of the original antique features but, due to its reconstruction, also has incorporated most of the normal modern functional components. With the exception of one comparable, all the Taxpayers' comparable sales are clearly of lesser quality. All the comparables are of modern construction with none of the antique features contained in the Taxpayers' house. In short, the Taxpayers failed to do an adequate comparison and analysis of comparable properties with reasonable adjustments for differences.

Second, the Taxpayers argued that the value of the Property would be affected by the abutting high tension power-line right-of-way on its western border. However, the Taxpayers did not submit any market evidence of any impact of the power-line on the Property's value. Further, since the

Taxpayers were the individuals who reconstructed the dwelling on the lot, it is difficult to believe that the Taxpayers would place a substantial

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improvement on a lot that is significantly burdened or overshadowed by a transmission power-line.

Third, the Taxpayers' arguments and methodology in this appeal is not substantially different than their presentation in their 1990 appeal (Docket No. 8860-90) where the board found the Taxpayers failed to make a reasonable adjustment in their analysis and generally failed in their burden of proof. See Appeal of Public Service Company of N.H., 120 N.H. 830, 333 (1980) (The board may consider previous valuations and factors affecting them and assign appropriate weight to those considerations.). In fact, the Taxpayers' comparables in this appeal were all contained in their 1990 appeal, and while the analysis is slightly different, the board continues to have the same concerns as to the lack of any proper adjustments or factors mentioned above.

Fourth, the sale of the property (Belko to Ware) several lots down the road from the Taxpayers for \$530,000 in April of 1993, generally supports the Town's contention that the Property is located in one of the more desirable areas of Town amongst other expensive homes.

Lastly, the board must question the veracity of the Taxpayers when they argue the proper assessment should be \$161,980 (or a market value indication of \$152,811 [$\$161,980 \div 1.06\%$ equalization ratio]) when during the time frame for submitting briefs to the board, the Taxpayers signed a realtor's listing

with an initial asking price of \$342,000 - later reduced to \$299,900. The board became knowledgeable of this listing due to a real estate insert in the Concord Monitor which featured the Property on its cover. The board, under its investigatory authority contained in RSA 76:16-a I, obtained a copy of the

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initial listing from the realtor and the subsequent reduced listing from the Taxpayers. The board is well aware that asking prices are not, in most cases, the market. However, the board finds the 85% to 111% discrepancy between the Taxpayers request for value for tax purposes and their asking prices (assessment request of \$161,980 versus asking prices of \$299,900 and \$342,000) sheds considerable doubt on the credibility of the Taxpayers' arguments.

In the Taxpayers' response to the board's paralegal's inquiry, the Taxpayers raised two additional issues:

- 1) they had not received a copy of the Town's submittal to the board; and
- 2) they wished to proceed with a hearing on the appeal.

Based on the copies of the certified mail receipts submitted by the Town, the board finds the Taxpayers signed for and received the Town's submittal.

The Taxpayers agreed in a letter of July 27, 1993 to waive their hearing rights and have the appeal decided by the board's expedited procedure (Tax 207). In part the letter stated: *** "please accept this letter as confirmation of my agreement to waive the hearing for the abatement of 1992 real estate taxes." Consequently, the board finds the Taxpayers have had full

opportunity to present the facts relative to their 1992 appeal and no hearing is warranted.

In conclusion, the board finds the revised assessment of \$285,600 (if adjusted by the Town's 1992 equalization ratio of 106%, indicates a 1992 market value of \$269,435 [$\$285,000 \div 1.06$]) is a reasonable assessment based on all the evidence submitted to the board.

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A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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; 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

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 Thomas E. and Claudia R. Sahrman, Taxpayers; and the Chairman, Selectmen of Hopkinton.

Dated:

Lynn M. Wheeler, Deputy Clerk

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