Thomas M. Palleschi

v.

Town of Epping

Docket No.: 12866-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of $78,300 (land $45,600; buildings $32,700) on a 10,865 square-foot lot with a mobile home (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 his burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:
(1) a comparable mobile home sold for $47,000 in April, 1993, and another sold for $9,000 in March, 1993;

(2) a September, 1992 market analysis estimated the range of value to be $49,900 to $55,900;

(3) Epping residents pay higher taxes than other residents throughout the state;

(4) the Town proposed constructing a shopping mall in the abutting lot;

(5) mobile homes depreciate in value; and

(6) the Property is currently listed for sale for $55,100.

The Town argued the assessment was proper because:

(1) the Taxpayer's comparable number 1 is not comparable because it is older than the Property and is located in another town and the listings are only asking prices, one is bank owned and one is located in another town; and

(2) the land was assessed equitably with other lots in the Town.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $71,000.

The board finds the best evidence of value to be the Taxpayer's appraisal. The appraiser used three comparable sales, one in the Town of Epping and two in the Town of Raymond which were then adjusted to arrive at a range of value for the Property. While desirable to have comparables from the same town as the Property, there is no statute prohibiting use of out of town comparables as long as adequate adjustments are made, if warranted. The Town's Assessor Consultant stated that the appraiser's comparable number 1 was not comparable because of its location, size and age. He did not comment on

comparable number 2 located in the Town of Epping or comparable number 3. The Taxpayer's appraiser made adjustments to all comparables for age and

condition, size and other factors. The appraisal was dated September, 1992 and the value would have to be trended back to April 1, 1992. The appraiser made no time adjustments to the comparables as they were sold in May and August of 1992. The board finds the high end of the range of value, $55,900, would reflect any change in the market, and finds a market value of $55,900 to be appropriate for April 1, 1992.

Referring to the Taxpayer's letter to the board of tax and land appeals (May 11, 1993), the Taxpayer cites two annual real estate tax bills on mobile homes on larger lots located in Campton, New Hampshire ($2,400) and Seabrook ($500). Tax bills are determined by local tax rates which may vary from municipality to municipality based on local spending and the size of the tax base (total property value in each town). Seabrook and Bow, New Hampshire, for example, have power generating plants which provide a substantial tax base which has the effect of drastically reducing the local tax rate (tax per thousand dollars of assessed valued on local properties). The Taxpayer argued the "Epping residents pay higher taxes than other residents throughout the state." This may be true, but the Town determines what the tax rate is for all residents based on local spending. The Department of Revenue Administration also calculated the equalized ratio (assessment to sales) for 1992 in Epping and found it to be 127%.

Neither party challenged the equalization ratio for the 1992 tax year. The board finds the Property's equalized value is $71,000 ($55,900 x 1.27).

If the taxes have been paid, the amount paid on the value in excess of

$71,000 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 1993 and 1994. 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, <u>not the date this decision is received</u>. 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

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George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas M. Palleschi, Taxpayer; and Chairman, Selectmen of Epping.

Dated: December 30, 1994

Lynn M. Wheeler, Deputy Clerk