

Ted and Kathleen Sparr

v.

Town of Durham

Docket No.: 12963-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$242,600 (land \$66,500; building \$176,100) on a 2.75-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 granted to the Town's recommended assessment.

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 carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) the Property's assessment is 151% higher than the bank's assessment;
- 2) errors exist on the assessment-record card, i.e., there is no air conditioning and only 3.25 baths not 4;

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- 3) the land was purchased in November 1991 for \$53,500 and the house was built for a cost of \$181,009 in July 1992;
- 4) the April 1, 1992 assessment should have been \$158,000 to reflect the Property as 60% complete; and
- 5) a proper assessment would be \$224,000 if 100% complete.

The Town recommended revising the assessment to \$224,400 and argued the revised assessment was proper because:

- 1) a sales analysis performed for the 1993 assessment update indicated non-waterfront lots decreased in value since the 1988 revaluation;
- 2) vacant lot sales of the non-waterfront portion of the subdivision are at the high end of the range of non-waterfront vacant lot sales in the Town. The comparables used (most successful subdivisions) demonstrated sales in the Deer Meadow subdivision were at the top end;
- 3) a spreadsheet analysis demonstrated that the 1993 equalized assessment is within range of comparable sales;
- 4) the Taxpayers' comparables were not comparable because they were small in effective living area and inferior in the number of bathrooms; and
- 5) the Taxpayers' Property was assessed consistently with other properties in the neighborhood.

Board Findings

Based on the evidence, the board finds the proper assessment to be \$224,400 as recommended by the Town for the following reasons.

- 1) This assessment is supported by the cost to construct the building (\$181,000) and a site value of \$67,850 ($\$66,500 \div 98\%$ 1993 ratio as determined

by the department of revenue administration), which was supported by the sales

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data. The Taxpayers' estimate of site value in the reproduction cost approach was \$72,000, including site improvements (driveway, landscaping, etc.). Both parties agreed that the building was 60% complete as of April 1, 1992 and, therefore, the building cost as of April 1992 is \$108,600 ($\$181,000 \times 60\%$) for a total of \$176,450 (\$67,850 land; \$108,600 building).

2) The board finds the Taxpayers' appraisal is low based on the comparable sales evidence submitted by the Town. The Town's evidence of vacant land sales in Deer Point subdivision, Canney Farms subdivision and Surrey Lane lots indicate that minimum adjustments of \$15,000 should have been made to the comparables for their inferior locations to the subject. Further, a size adjustment to comparable #3 for the difference between a .5-acre lot and the subject's 2.75 acres and a quality adjustment for good vs. average construction should have been made by the appraiser.

3) The Taxpayers' appraisal figures should have been more in line with his cost approach which is supported by the actual cost to construct (\$181,000).

Neither party challenged the Department of Revenue Administration's equalization ratio of 127% for the 1992 tax year for the Town of Durham. The board finds the revised assessment of \$224,400 or an equalized value of \$176,700 is proper and no further adjustments are warranted.

The Taxpayers argued that the Town does not provide water or sewer service to the Property. Lack of municipal services is not necessarily evidence of disproportionality. As the basis of assessing property is market

value, as defined in RSA 75:1, any effect on value due to lack of municipal services is reflected in the selling price of comparables and consequently in the resulting assessment. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

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If the taxes have been paid, the amount paid on the value in excess of \$224,400 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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. 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

Paul B. Franklin, Member

Michele E. LeBrun, Member

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Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Ted and Kathleen Sparr, Taxpayers; and Chairman, Board of Selectmen.

Dated: May 17, 1995

Melanie J. Ekstrom, Deputy Clerk

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