Marc Pickard and Susan Hurst

v.

Town of Northfield

Docket No.: 13171-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of $104,000 (land $33,600; buildings $70,400) on a 1.2-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 of $83,800.

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).

The Taxpayers argued the assessment was excessive because:
(1) the house is defective, e.g., there are cracks in the slab and foundation, the windows were installed incorrectly, and the workmanship on the porch is inferior;

(2) a July 1992 appraisal estimated a $48,000 value and the Property was purchased for $46,000;

(3) the Town incorrectly assessed the house with four bedrooms when there are only three, and the upstairs is incomplete;

(4) there was no credit for unfinished areas on the assessment-record card as in other properties' cards; and

(5) the fair market value as of April 1, 1992 was $55,000.

The Town inspected the Property and recommended adjusting the assessment to $83,800. The adjustment increased the depreciation to address the unfinished second story and functional deficiencies. The Town argued the adjusted assessment was proper because:

(1) the land value is consistent with land values established during the 1989 revaluation;

(2) the building value with adjustments reflects the proper depreciation requirements;

(3) the Taxpayers' appraisal is flawed because the appraiser relied on comparables located in another Town, the appraiser did not inspect the comparables and failed to time adjust the sales to the assessment date; and

(4) the Property was purchased from a bank and the purchase price does not represent the market.

Board's Rulings

Based on the evidence, the board finds an assessment of $83,800 is proper, which addresses the unfinished second story and functional deficiencies. The board further finds that the Town, in its revised

assessment, has made adequate adjustments to the Property to reflect its

depreciation. The board finds no further adjustments are warranted. The Taxpayers stated the Property's purchase price was $46,000 in July 1992. While this is some evidence of the Property's market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). However, where it is demonstrated that the sale was an arm's-length market sale, the sales price is one of the "best indicators of the property's value." Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988). Although the Taxpayers stated that the purchase was an arm's-length transaction, they also stated the Property's fair market value as of April 1, 1992 was $55,000, which suggests that they consider that they purchased the Property for less than market value. Further, the Town stated that the Property was purchased from a bank who had foreclosed on the Property. Sales made by an owner to satisfy delinquent loans are not "arm's length" due to the pressure of the owner to sell; consequently, while these accelerated sales will affect the market value of those who choose not to sell, they alone do not define the market.

The board did not find the Taxpayers' appraisal to be convincing because:

1) it was a bank appraisal to establish a value of the Property, which was under contract for $46,000;

2) the comparable sales used were located in towns 10 to 12 miles from the subject and the appraiser made no locational adjustments;

3) no adjustments were made for size of the Property or age of the building;

4) a $5.00 per-square-foot adjustment to the comparables' buildings was made

without any data as to how the value was arrived at; and

5) the appraiser failed to estimate the value by the cost approach and estimated a site value of $20,000 with no comparable sales to support the value.

If the taxes have been paid, the amount paid on the value in excess of $83,800 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 thirty (30) 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

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Marc Pickard and Susan Hurst, Taxpayers; and Chairman, Selectmen of Northfield.

Dated: March 17, 1995

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Lynn M. Wheeler, Deputy Clerk