

Robert F. Gookin and Angela M. Marino

v.

Town of Bethlehem

Docket No.: 13266-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$59,450 on a vacant, 20.50-acre lot (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.

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 their burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Property was purchased in June, 1987 for \$20,000;
- (2) an April 1, 1988 appraisal estimated a \$29,300 value, and a 1992 appraisal estimated a \$16,000 value; and

(3) comparable lots support the Property's overassessment.

Page 2

Gookin/Marino v. Town of Bethlehem

Docket No.: 13266-92PT

The Town argued the assessment was proper because:

- (1) the Property's assessment was comparable with similar lots adjusted for topography and utility;
- (2) the Taxpayers' appraisal's comparables were not comparable in size; and
- (3) the Taxpayers' appraisal was flawed because the appraiser failed to explain the adjustments made and only one page of the appraisal was submitted.

The board's inspector, reviewed the property-assessment card, reviewed the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the proper assessment should be between \$34,000 and \$40,000. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$40,000, which results in an equalized assessment of \$27,400 ($\$40,000 \div 1.46$, the equalization ratio).

The board reviewed the file and concluded an adjustment was warranted. The board, however was unsure about what an appropriate adjustment would be. Therefore, we had the inspector review the file to confirm the board's initial impression and to recommend an appropriate adjustment. We find his report to be consistent with the board's thinking. We selected the high range, finding the Taxpayers' material did not warrant selecting the low range.

Specifically, the 1988 appraisal was remote in time from the April 1, 1992

Page 3

Gookin/Marino v. Town of Bethlehem

Docket No.: 13266-92PT

assessment date, and the 1992 appraisal contained very little information that the board could utilize in reviewing the appraisal and its ultimate value conclusion.

If the taxes have been paid, the amount paid on the value in excess of \$40,000 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 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). In this case, the Taxpayers or Town may question, in the rehearing motion, the inspector's report because the parties have not had an opportunity to review the report. 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.

Page 4
Gookin/Marino v. Town of Bethlehem
Docket No.: 13266-92PT

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert F. Gookin and Angela M. Marino, Taxpayers; and Chairman, Selectmen of Bethlehem.

Dated: February 22, 1995

Lynn M. Wheeler, Deputy Clerk

0006