

George and Katherine Quinn

v.

Town of Bradford

Docket No.: 13489-92PT

DECISION

The "Taxpayers" appeal pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$55,000 (land, \$42,600; building, \$12,400) on a seasonal summer camp on .16 of an acre (the Property). 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 this burden and proved disproportionality.

The Taxpayers submitted a brief that presented their arguments in full. The Taxpayers also filed a rebuttal which the board has read. The following is a short summary of the Taxpayers' arguments:

- 1) the Property is on a slope, no beach and access is on a rocky-hilly trail;
- 2) market values of property which sold between January 1990 and December 1991 did not reflect the market values for the 1992 and 1993 period; and

Page 2

Quinn v. Town of Bradford

Docket No.: 13489-92PT

3) the Property had a fair market value of \$38,500 as of April 1, 1992 based on the average percentage reduction of lake properties in 1993.

The Town submitted a brief that presented the Town's arguments in full. The following is a short summary of the Town's arguments:

- 1) there was a town-wide revaluation in 1992 and waterfront properties were impacted the most due to greater market demand and value shift;
- 2) the market has typically shown that island properties require a -50% adjustment; since the subject is not completely surrounded by water and can be accessed by foot year round, a market adjustment of -30% was given due to its lack of road access; the adjustments given to lots on the footpath were different based on their distance from the end of the road;
- 3) an older sale on a footpath that occurred in October 1989 for \$90,000 was trended to establish a market adjustment for being on a footpath;
- 4) comparable assessments demonstrated the Taxpayers' had been assessed proportionately;
- 5) the Taxpayers' argument that other properties were more valuable because they are flatter and have a beach is unsupported by the market which did not recognize differences in topography between lakefront lots;
- 6) the Taxpayers' comparable sales are all somewhat suspect, i.e., fiduciary deed, sold to an abutter, deed in lieu of foreclosure, motivated sale; and
- 7) the Taxpayers failed to provide evidence that the assessment is inequitable or disproportionate, failed to present an appraisal and the appeal should be denied.

Board's Rulings

In arriving at its decision, the board has reviewed all of the Town of Bradford cases that were appealed for the 1992 tax year and the evidence presented by all parties, Town and Taxpayers. Based on the evidence, the board finds the proper assessment to be \$50,600 (land \$36,500; buildings \$14,100).

The Town stated that in arriving at a market adjustment for properties located on a footpath, that market trends for island properties were considered and these trends indicated a -50% market adjustment for island properties. Given the fact that the subject Property is located on a footpath, the Town determined an adjustment of -30% was appropriate. The Town did not submit any analysis for the board to review how its island property adjustment was elicited nor did the Town support its footpath adjustment by any conclusive method.

The Town stated that two sales had occurred on the footpath -- the first sale took place in October 1989 for \$90,000 (Flegal) and the second took place in July 1993 for \$67,800 (Crepeau). The Town argued that the Crepeau sale was not a market sale because the owner had another property on the Cape and therefore was motivated to sell. Many of the Taxpayers stated that the sale had been confirmed with the owner (Taxpayers stated sale price to be \$64,500), that the owner purchased the Cape property prior to buying the property and that it had been purchased as an investment. The board finds that there was no evidence submitted to suggest that this sale was not an arm's-length transaction. In fact, the property had been listed on the market for over a year and a half, was properly advertised, and there was no evidence to suggest

that the seller was under duress.

Page 4

Quinn v. Town of Bradford

Docket No.: 13489-92PT

A -1/2% per month time adjustment was used in the Town for trending but the Town "felt" that waterfront properties did not depreciate at the same rate as other properties in Town. The Town submitted no basis for this feeling. The Flegal and Crepeau sales indicate at the very least that properties on the footpath had in fact depreciated in value.

The board finds the market adjustment applied by the Town for the Property was low. The Property not only suffers from lack of direct access but the footpath passes between the owners' building and the lake front and the owners must deal with the intrusion not only of other owners but also outsiders (hikers, mountain bikers, etc.) passing through their Property. Based on all of the evidence presented, the board has determined an adjustment of -40% to the land value is proper.

Averaging sales, as done by the Taxpayers, is not a conclusive method of establishing market value since averaging ignores the unique characteristics of properties. Rather, analyzing, comparing, and weighing sales data and then correlating the most pertinent aspects of the sales to the subject property arrives at the best indication of market value.

If the taxes have been paid, the amount paid on the value in excess of \$50,600 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 Page 5

Quinn v. Town of Bradford

Docket No.: 13489-92PT

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

George Twigg, III, Chairman

Michele E. LeBrun, Member

Certification

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

Dated: June 22, 1995

0006

Melanie J. Ekstrom, Deputy Clerk