

Barbara C. French

v.

Town of Bradford

Docket No.: 13540-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$126,600 (land, \$98,500; building, \$28,100) on .7 acres with a 1-3/4-story cottage (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 denied.

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 failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

- 1) the \$850 front foot value on Lake Massasecum is too high;
- 2) lake values are not proportionate and are excessive compared to other property values;

- 3) sales used by the department of revenue administration (DRA) were before the full decline of the market;
- 4) the recent sales of lots 50 and 51 when considered with the five other comparable sales in the revaluation sample suggests a front foot value of \$555 on Lake Massasecum;
- 5) the water level is high on the lake and responds to excessive rain; and
- 6) a proper fair market value as of April 1, 1992 was \$93,200.

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

- 1) there was a town-wide revaluation in 1992 and waterfront properties were impacted the greatest due to market demand and value shift;
- 2) comparable assessments (Ex. E) demonstrate the Taxpayer's assessment was comparable;
- 3) the Taxpayer's sales are questionable, e.g., on footpath, fiduciary sale and estate sales; and
- 4) the Taxpayer failed to provide any evidence to demonstrate the assessment was inequitable or disproportionate.

BOARD FINDINGS

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed. The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding

Page 3

French v. Town of Bradford
Docket No.: 13540-92PT

Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

The Taxpayer asked the board to base its decision on the sales of two additional properties (lots 50 and 51) and to consider sales #'s 47, 48 and 49 which were not considered by the DRA in determining a front foot value on Lake Massasecum. Sales 47, 48 and 49 were appropriately omitted from the sales study. Bank sales, distressed sales, foreclosure sales, family sales or any questionable sales are not considered to be arm's-length transactions and should not be relied upon to establish values. Thus, it is not appropriate to simply add all of the properties and use an average to determine a front foot value. During the reassessment, all sales which occurred between January 1, 1990 and December 31, 1991 were analyzed. It is not appropriate to take sales subsequent to the study and merely add them to the list to average them out. It is appropriate to analyze sales of comparable properties which occurred subsequent to the revaluation. It is important however to present evidence to the board that 1) the properties are comparable in size, condition, topography, access, or any other factors and indicate what adjustments should be made for differences in the sales; 2) the sales were arm's-length transactions (willing buyer, willing seller, neither under duress, property exposed on the market for a reasonable period of time); and 3) establish the proper time adjustment from the dates of the sales to the date of the assessment, April 1, 1992 through market evidence. This information was not provided to the board in this case.

The two sales used by the Taxpayer (#50 and #51) were of little value to the board because sale #50 was a fiduciary sale and the Taxpayer offered no

evidence of how sale #51 (Crepeau) compared to the subject, what adjustments should be made for

Page 4

French v. Town of Bradford

Docket No.: 13540-92PT

differences in the topography, foot path access, or time of sale. Without this information, the board is unable to make any value conclusions.

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. This, 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

Page 5
French v. Town of Bradford
Docket No.: 13540-92PT

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Barbara C. French, Taxpayer; and Chairman, Board of Selectmen.

Dated: June 22, 1995

Melanie J. Ekstrom, Deputy

Clerk

0006