

Alan W. Pinkham

v.

Town of Barnstead

Docket No.: 13896-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessments of: \$123,084 (land, \$16,184; building, \$106,900) on a 16-acre lot with a building (14.5 acres in current use and 1.5 acres not in current use) (Map 10, Lot 15); and \$661 on a vacant, 14-acre lot in current use (Map 10 Lot 15-1) (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 with the exception of applying the Town's 1993 ratio to the current use assessments.

The Taxpayer has the burden of showing the assessments were 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's brief contained a substantial amount of detailed arguments to support his contention that the Property is overassessed. The board has

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reviewed all the material but will not reiterate the arguments here. In summary, the Taxpayer argued the assessments were excessive because:

- 1) the Town erred on the assessment-record card by overstating the acreage;
- 2) the Town did not apply the ratio adjustment as required by RSA 79-A:5 I;
- 3) an appraisal dated April 1993 indicated a fair market value (not including current use) of \$130,000; yet the Town in 1990 indicated an ad valorem value of \$140,600;
- 4) after a review of other property assessments, commercial and lake properties are underassessed; and
- 5) a comparable property, similar in quality and size, had the building rated lower.

In the Taxpayer's rebuttal, he stated:

- 1) the appraisal, even though prepared by a lending institution, is evidence of market value; and
- 2) the Town failed to show how the appraisal was flawed and did not present any comparable sales.

The Town argued the assessments were proper because:

- 1) for the tax year 1993, the assessment-record card was corrected to address the proper acreage;
- 2) the Town agrees the equalization factor should have been applied to the current-use portion; however, the Taxpayer's remaining arguments are inconclusive;
- 3) the Taxpayer's appraisal was prepared for equity lending purposes and does not represent a fair market value of the Property; and

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4) the Taxpayer's Property was fairly and equitably assessed and is not disproportionate.

Board Findings

The Taxpayer argued two general issues: 1) the Town did not apply the equalization ratio to the current-use assessment; and 2) the Taxpayer's appraisal for \$130,000 proved the Town's equalized ad valorem assessment of \$157,978 was excessive.

Ratio

The first issue is easily disposed of. RSA 79-A:5 I clearly states ... "The valuations shall be equalized for the purposes of assessing taxes."... Therefore, the current-use assessment on lot 10/15-1 should be \$588 and the current-use portion of the assessment on lot 10/15 should be \$609 for a total assessment on lot 15 of \$123,009.

Market Value

The Taxpayer argued the Town's \$140,600 ad valorem assessment for lot 15 was excessive because the equalized market value, \$157,978, ($\$140,600 \div .89$) exceeded a 1993 bank appraisal which estimated market value at \$130,000. The Taxpayer, however, was not taxed on the assessment of \$140,600 but rather on an assessment of \$123,084 because all the land except a 1.5-acre homesite is in current use. While the Taxpayer may disagree with the Town's ad valorem assessment, the ad valorem assessment on the entire Property is not the proper basis for appeal because the Taxpayer was not taxed based on that assessment. The Taxpayer is only a "person aggrieved" (See RSA 76:16) to the extent of the actual tax. In this case, the actual tax is based on the ad valorem assessment

of 1.5 acres and the improvements and the current-use assessment of 14.5 acres.

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In contrast, the Taxpayer's appraisal valued the entire Property at market value

with no breakdown between the land and building value¹.

This appeal could be denied solely (except for the current-use ratio issue) on the basis that the Taxpayer did not show that he was disproportionately taxed based on the actual assessment (ad valorem and current use) of \$123,084.

However, the board attempted to analyze further the Taxpayer's appraisal to discern any differences in the valuation methodology between the appraisal and the Town's assessment. The board analyzed three components of the Property's value:

- 1) the excess land (the acreage in excess of the homesite);
- 2) the buildings; and
- 3) the homesite including well and septic value.

Excess Land

The board was able to identify the value the Taxpayer's appraiser contributed to the land in current use based on the \$1,500 per-acre adjustment to the comparables for the excess land the Property contains. The board next looked at the Town's ad valorem assessment and compared it to the land assessment after current use was granted. The ad valorem land assessment inclusive of well and septic was \$33,700. The land assessment after current

¹ The Taxpayer's appraisal contained a notation in the supplemental addendum that the reproduction cost was based on Marshall & Swift replacement cost. However no cost approach was submitted with the appraisal.

use, including well and septic but not the current-use value for 14.5 acres, was \$15,500, indicating an assessed value difference of \$18,200 for the 14.5 acres in current use (\$33,700 - \$15,500). Equating this assessed value to market value (dividing it

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by the 1993 equalization ratio of .89) provides an indicated market value of \$1,410 per acre that the Town had in essence assessed the supplemental land (land in excess of the 1.5 acres not in current use). Noting the similarity between the Taxpayer's appraisal of \$1,500 per acre and the Town's of \$1,410 per acre, the board concluded the major difference in the opinion of ad valorem value by the parties was in the improvements.

Buildings

Consequently, the board requested its appraiser, Scott Bartlett, to inspect the quality of the house and the improvements in general and file a report. Mr. Bartlett was not requested by the board to do a full appraisal or to review any comparables submitted by the Taxpayer.²

In his report, Mr. Bartlett estimated the depreciated replacement cost of the house and garage at \$118,872. The Town's depreciated replacement cost at 89% of market value was \$106,900 or \$120,112 when equalized ($\$106,900 \div .89$). The board notes that Mr. Bartlett's report neglected to add for the building's fireplace, which could more than account for the approximately \$1,700 difference. The Taxpayer argued the cost approach may not reflect market

² 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 or observations in whole or in part.

value because purchasers would not spend more to build if they could buy existing comparable properties for less. While this is a phenomenon that does occur in the market, the board was unable to conclude that was the case in this appeal due to a number of factors including: 1) no cost approach was submitted with the Taxpayer's appraisal; 2) the Taxpayer's appraisal's comparables were some distance from the

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Taxpayer's Property; 3) no photographs of the comparables were submitted for comparison purposes and the descriptive information was quite brief; 4) no interior photographs of the Taxpayer's house were submitted to indicate the quality of the interior finish; 5) the Taxpayer's house is relatively new (six years old in 1993); 6) the Town's grading as a class 4 indicates the possibility of a better quality interior when compared to the photographs of the exterior; and 7) Mr. Bartlett's report indicated that the interior finish was good versus exterior of average/good.

Weighing all these factors, the board concludes that because the description of the comparables in the market approach was very brief and because the subject house is relatively new, the most reliable method in valuing the house is the cost approach. Therefore, the board concludes the Town's portion of the assessment for the buildings is reasonable.

Homesite

The remaining component of the actual assessment, the one and one-half acre homesite, is assessed at \$15,500. The Taxpayer's appraisal did not have a separate value for the site (normally a site value is assigned in the cost approach but none was submitted with the appraisal). Based on the board's

experience and knowledge³, the board finds the site's assessment including well and septic of \$15,500 (market value \$17,416 ($\$15,500 \div .89$)) is reasonable. The Taxpayer asserted that the steepness of the driveway affected the value of the Property. However the board notes the Taxpayer's appraisal did not contain any

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adjustments for that factor. Based on that evidence and the photographs submitted, the board finds the topography adjustment given by the Town on the homesite value is reasonable.

In conclusion, the board finds that, with the exception of the equalization ratio adjustment to the current-use portion of the land assessment, the Property was properly assessed by the Town.

The board emphasizes that Mr. Bartlett's report was only one piece of evidence in this case and was weighed and reviewed by the board in the same manner as the Town's and Taxpayer's evidence. For instance, on the cover sheet of the report, Mr. Bartlett indicated the equalized assessment per acre of land not in current use was \$11,600 per acre. The board notes this calculation included the value of the well and septic and thus was a higher value than that calculated by the Taxpayer. Further the board noted that on page 2, fifth paragraph of Mr. Bartlett's report, a miscalculation was made in determining the market value of the land not in current use. However the board finds this error was immaterial in its final deliberation as that paragraph was nothing

³ The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

more than an attempt to equate the Taxpayer's appraisal value of \$130,000 to an assessed value and was not a factor in Mr. Bartlett's final conclusion.

If the taxes have been paid, the amount paid on the value in excess of \$588 for lot 15-a and \$123,009 for lot 15 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

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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

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Alan W. Pinkham, Taxpayer; and Chairman, Selectmen of Barnstead.

Date: October 27, 1995

Melanie J. Ekstrom, Deputy Clerk

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