Kathryn B. Johnston

v.

Town of Deerfield

Docket No.: 14061-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of $148,500 (land $105,400; buildings $43,100) on a 17,424 square-foot lot with a 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 granted.

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 carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:
(1) the Property is seasonal and lacks heat, insulation and a modern kitchen and bath;

(2) the roof sags, the structure is warped and bowed, and there is no foundation;

(3) the Property was purchased in August 1993 for $87,500, which included $10,000 worth of personal property, indicating a market value of $77,500;

(4) the Property was originally assessed as part of the adjoining lot, but when the Property was sold to the Taxpayer, the Town reassessed the Property and the adjoining lot and this increased the combined assessment on the lots from $164,000 to $254,700;

(5) the Town assessed the Property as a conventional residence when it is only a camp;

(6) comparable properties' assessments support the Property's overassessment; and

(7) the assessment should be $105,400 ($77,500 purchase price x 1.36 equalization ratio).

The Town failed to submit a brief to support the Property's assessment and was finally defaulted.

The board's inspector inspected the Property, reviewed several comparables, reviewed the Property's assessment-record card, reviewed Taxpayer's brief and filed a report with the board. The report was sent to the parties and the parties were granted an opportunity to respond to the report. This report concluded an assessment range of $119,000 to $127,100. 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. In this case, the board gives the inspector's report some weight and considers it with the other evidence.

Board's Rulings

The Taxpayer argued the sale price should be given substantial weight in determining the Property's assessed valuation. Normally the sale of the subject Property, if there is no evidence submitted to disqualify the transfer and if generally conforming to other general market data, is given considerable weight by the board in its deliberations. Appeal of Lake Shore Estates, 130 N.H. 504 (1988).

In this case, the board finds the sale price is not conclusive of the Property's value but is given some weight. There are several factors related to the transaction that cause the board to also consider and give some weight to the board's inspector's report and comparable sales included in that report. First, the Property's transaction included significant personal property as detailed in the affidavit of Kathryn B. Johnston. Second, the purchase and sales agreement stated the Taxpayer was to install a well on the grantor's adjoining lot as part of the consideration.

The board agrees with the inspector that putting a definitive value on personal property involved in the transfer of real estate is often a difficult calculation. Grantors and grantees have different motivations relative to the personal property and will often place quite differing value on that property. Based on the evidence in this case, the board finds the value of the personal

property is approximately offset by the estimated cost of installing the well on the adjoining lot. The board finds the value of an artesian well to be more in the vicinity of $5,000 than the $2,500 estimated by the Taxpayer.

Further, the value of the personal property to the grantor is likely to be less than that to the grantee. Much of the personal property (with perhaps the exception of such larger items as the boats) has greater value in its use in conjunction with the real estate than it has if sold separately.

While the sale of the subject Property gives some indication of market value, other comparable sales should be considered, if they exist, to determine whether the subject sale follows the pattern of the general market. In this case, the inspector's report contained only one other comparable sale that was considered to be a valid transaction. With adjustments, that sale indicated a higher market value ($93,450) than the Property's sale at $87,500. Giving equal weight to the sale of the subject Property and the indicated market value from the comparable sale, the board finds the Property's market value to be $90,000. Adjusting the market value of $90,000 by the Town's 1993 equalization ratio indicates a proper assessment value of $122,400 ($90,000 x 1.36).

If the taxes have been paid, the amount paid on the value in excess of $122,400 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, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1994 and 1995. 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). 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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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John G. Cronin, Esq., Counsel for Kathryn B. Johnston, Taxpayer; and Chairman, Selectmen of Deerfield.

Dated: December 14, 1995

Lynn M. Wheeler, Deputy Clerk