

Robert M. Beyer, Jr.

v.

Town of Hopkinton

Docket No.: 14073-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$251,900 (land \$119,200; buildings \$132,700) on a 3.22-acre lot with a single-family house (the Property). 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 his burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the home is 14 years old and much of the rear of the house and end of the garage have never been stained which has caused curling and deterioration of the pine clapboards;
- (2) the house is several feet below road grade and the lot slopes downward from the road to the rear at a depth of approximately 650 feet;

- (3) the winter view is very good; however, the summertime view is somewhat obstructed by foliage on abutting properties; and
- (4) based on an appraisal report using sales of comparable properties, the indicated fair market value of the Property as of April 1993 was \$183,000.

The Town argued the assessment was proper because:

- (1) there are many comparable properties closer to the subject that support the assessment; and
- (2) most of the sales on Dolly Road sell for more than the assessed value.

Board's Rulings

Based on the evidence, we find the fair market value of the Property to be \$183,000 for a proper assessment of \$206,800. The board finds the testimony and appraisal report of Mr. Hadaway to be the best evidence of the value of the subject Property. The board reviewed the report, the photographs of the subject and comparable sales and the comparable sales data submitted along with the adjustments made and finds the appraiser's opinion was very credible. It is evident from the photographs and the testimony that a prospective purchaser would take into consideration the anticipated costs to cure its deferred maintenance.

The Town stated that sales along Dolly Road supported the assessment; however, no evidence was submitted to support this conclusion. The Town failed to submit any sales to support the assessment. RSA 75:1 requires that assessments be in line with market value. Therefore, providing sales is essential for the board to compare the Property's assessment with fair market value and the general level of assessment in the municipality. See Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986).

If the taxes have been paid, the amount paid on the value in excess of \$206,800 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 "rehearing 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 rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing 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 rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing 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.

Docket No.: 14073-93PT

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert M. Beyer, Jr., Taxpayer; and Chairman, Selectmen of Hopkinton.

Dated: April 11, 1996

Valerie B. Lanigan, Clerk

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