George A. Rogers

v.

Town of Amherst

Docket Nos.: 14438-93-PT and 15833-94-PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of $132,300 (land $25,100; buildings $107,200) and 1994 adjusted assessment of $149,000 (land $60,200; buildings $88,800) on a 2.5-acre lot with a single-family home (the Property). For the reasons stated below, the appeals for abatement are 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.

The Taxpayer argued the 1993 assessment was excessive because:

(1) the acreage was broken down into incorrect land categories; the land is actually 2.5 acres, has a severe slope, ledge and, except for the primary site, is unimproved with no access;

(2) there is a 50 foot right-of-way abutting the Property;

(3) comparable land assessments prove the subject is overassessed; and

(4) there are inaccuracies in the building assessment (wrong year built), needs complete modernizing, assessment of enclosed porch and garage are excessive, basement is not finished.

The Town recommended revising the 1993 assessment to $110,200 and argued this revised assessment was proper because:

(1) the adjustment for the acreage has been applied;

(2) the minimum lot size in the Town is 2 acres and the Property is located in an upscale section of Town where raw land sales typically are in excess of $60,000;

(3) the location of the Taxpayer's comparables are not similar to the subject's location; and

(4) a reworking of the assessment record card to account for the Taxpayer's concerns indicated a fair assessment of $110,200.

The Taxpayer argued the 1994 assessment was excessive because:

(1) the Town again incorrectly described the land data and did not adjust for size and existence of the right-of-way;

(2) there are continued inconsistencies in the building description (year built, story height, obsolete kitchen, lack of basement living space, number of baths and fireplaces);

(3) comparable land assessments show the subject was overassessed;

(4) the land assessment should have a base lot size of 0.9-acre with 1.6 acres rear land for a total land assessment of $49,000; and

(5) the total assessment should be $129,000.

The Town argued the 1994 assessment was proper because:

(1) minimum zoning is 2.0-acres and the assessment is of $60,000 for the base lot is consistent with sales in the neighborhood;

(2) comparable sales support the assessment; and

(3) the Taxpayer's noted inconsistencies have been addressed.

Board's Rulings

Based on the evidence, we find the proper 1993 assessment to be $103,350 and the 1994 assessment to be $141,600. These are based on a market value finding for both years of $141,600 equalized by the Town's respective ratios of 73% and 100%. This value was arrived at by applying 5% to the base lot value and applying a 5% functional depreciation to the total building assessment.

Based on the Taxpayer's description of the land and its comparison to nearby lots that are clearly superior in their desirability, utility and landscaping, we find that a 5% adjustment is reasonable. Given the description of the land, it would not be unreasonable in some markets to adjust the base lot further; however, we do agree with the Town that in some markets such as Amherst, topography does not affect the market as much as it may in other markets. Nonetheless, we find some adjustment is warranted based on the significant difference between the Property and nearby lots.

The board finds a 5% functional depreciation should be applied to the improvements for the utility of the solar greenhouse area and the general inherent functional obsolescence of houses this age. (While we gave it no weight in determining functional obsolescence was necessary, we note that 5%

functional obsolescence was noted on the property-record card and a note of functional obsolescence size adjustment was mentioned on the computerized valuation report).

Further, the board reviewed the comparables submitted by the parties and in particular the Town's sales comparables. In general, we find that the Town's sales comparables after taking into account differences in living area, grade of home, outbuildings, extra features, etc., support a lower finding of market value roughly in the $140,000 range.

If the taxes have been paid, the amount paid on the values in excess of $103,350 for 1993 and $141,600 for 1994 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 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, <u>not the date this decision is received</u>. 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
Paul B. Franklin, Chairman

_____
Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to George A. Rogers, Taxpayer; and Chairman, Selectmen of Amherst.

Date: June 17, 1996

_____
Valerie B. Lanigan, Clerk

0006