Frank A. Bimbo & Deborah Olauson

v.

Town of Peterborough

Docket No.: 14451-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of $182,400 on an incomplete single-family home (the Property). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. After reviewing the Taxpayers' brief the Town recommended adjusting the assessment to $144,900 (land $79,900; buildings $65,000). The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers carried their burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the lot was purchased in December 1992 for $37,000, which was comparable to the prices paid on adjacent lots;

(2) the house was only 35% complete on the assessment date; and

(3) the assessment should be $37,000.

The Town recommended reducing the assessment to $144,900 based on revising the land assessment due to the Property's lack of view.

The Town argued the recommended assessment was proper because:

(1) the Town questioned the validity of the Taxpayers' purchase and the other sales used by the Taxpayers;

(2) the land assessment was calculated during the 1989 revaluation based on 2 sales in this development; and

(3) the adjusted assessment reflected the lack of view.

The board asked its paralegal to contact the parties concerning certain questions, and copies of her memoranda to the file are attached.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be $116,950 (land $51,950; building $65,000). The major issue in this case is whether the board should rely upon the Taxpayers' $37,000 1992 purchase and the two other lots sales in this subdivision. Below is a listing of the sales with the comments from the revenue department's ratio study and whether the sales were used in that ratio study.

Lot	Sale Date	Price	Land Assessment	Ratio Study
Property	12/92	$37,000	$117,400	Verified & used in 1993 study
R7 1A-6	12/92	$39,000	$104,900	Verified "Per Town, Grantor in financial distress," not used in 1993 study
R7 1A-2	1/93	$33,000	$111,800	Verified "Per Town, Grantor in financial distress," not used in 1993 study

Given these three sales, the board had questions about whether the sales qualified as market value sales. The board's paralegal contacted the parties and the seller (see paralegal memoranda). The statements from the Taxpayers and the seller indicated these sales were arm's-length market sales. The Town did not provide sufficient information for us to conclude otherwise. Where it is demonstrated that a sale was an arm's-length market sale, the sales price is one of the "best indicators of the property's value." Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988). The board finds the Taxpayers' land purchase was representative of the market.

The ordered $51,950 land assessment was calculated by multiplying the $37,000 purchase price by 1.20 (or increasing it by 20%) to reflect the developed nature of the lot on April 1, 1993, and then multiplying that new figure by 1.17, which was the 1993 equalization ratio.

$37,000 x 1.20 (developed) = $44,400 (approximate market value) x 1.17 (equalization ratio) = $51,950 (land assessment)

The board then added the $65,000 building assessment to arrive at the new $116,950 total assessment.

If the taxes have been paid, the amount paid on the value in excess of $116,950 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. 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. Note: to the extent the Taxpayers did additional work to the Property, the Town should adjust the assessment.

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, <u>not the date this decision is received</u>. 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. 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

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George Twigg, III, Chairman

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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 Frank A. Bimbo and Deborah Olauson, Taxpayers; and Chairman, Selectmen of Peterborough.

Date: October 18, 1995

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Valerie B. Lanigan, Clerk