Noella and Victor A. Martin, Sr.

v.

Town of Pembroke

Docket No.: 15021-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of $83,450 (land $30,050; buildings $53,400) on a 1.950-acre lot with a single-family home (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

(1) only one-half an acre is usable due to river flooding;

(2) the vinyl siding was simply replacement siding for poorly installed siding;

(3) the roof was replaced after ice damage;

(4) the driveway was resurfaced and not expanded; and

(5) the deck only cost $400.

The Taxpayers also stated the Town sales were dissimilar to the Property because the sales were not in the flood zone.

The Town argued the assessment was proper because:

(1) the Taxpayers did not present any valuation information that showed the Property was overassessed;

(2) the Taxpayers' improvements increased the Property's value, requiring revising the assessment;

(3) the Taxpayers' house is not subject to flooding;

(4) the land assessment included a topographical adjustment for the flooding;

(5) several sales supported a market value of $81,850 to $83,550 for the Property; and

(6) the total assessment was reasonable.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not show the Property was overassessed. The Property's equalized assessment was $80,200 ($83,450 assessment ÷ 1.04 equalization ratio). Thus, to show overassessment the Taxpayers were required to show the Property was worth less than $80,200. The Taxpayers did not. Moreover, the Town sales supported the equalized assessment.

Because the Taxpayers failed to show the equalized assessment was excessive, their specific arguments also do not show error. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899). Nonetheless, the board responds to the Taxpayers' arguments as follows.

(1) The Town did not err in decreasing the depreciation (resulting in an increased building assessment). The improvements -- new roof, siding, garage doors, driveway and interior work -- improved the

Property, resulting in a value increase. Simply put, buyers will pay more for a house in good condition.

(2) The Town gave sufficient topographical adjustment to the land to reflect the flooding that decreases the usable area. However, the flooded area is not always flooded and when not flooded provides river view and access, which can positively influence value.

(3) The Town's deck assessment was not excessive. The Taxpayers' $400 cost did not include labor because they built the deck themselves.

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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, 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 Noella and Victor A. Martin, Sr., Taxpayers; and Chairman, Selectmen of Pembroke.

Date: November 20, 1996

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Valerie B. Lanigan, Clerk

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