

Michael P. and William J. Kearns

v.

Town of Bristol

Docket No.: 15022-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$124,150 on a single-family home (the Property). 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 this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) it was purchased in September 1992 for \$96,000, and the Property had been on the market for six months at \$104,900;
- (2) the Property is across the street from the lake, and the Town has asserted ownership of the lakefront, excluding the use of a dock or a boat; and
- (3) during the assessment update, the Town used the lakefront influence when this is not a waterfront lot.

The Town argued the assessment was proper because:

- (1) the lakefront assessments were at \$2,000/foot, and the assessments across the lake were at \$1,300/foot;
- (2) the assessment was based on a stratified assessment update; and
- (3) the same factors were applied to all similar properties.

Board's Rulings

Based on the evidence, the board finds the assessment to be \$109,200, which equates to a \$105,000 market value when divided by the 1.04 equalization ratio.

The board began by reviewing the Town's assessment methodology, including the assessment update information. This review raised more questions than answers. Based on the card, the 1988 revaluation assessment was \$173,200, but that assessment was reduced in 1993 to \$142,750. The assessment card showed a reduction in the land assessment due to changing the front-foot price from \$1,300/foot to \$1,000/foot. The card noted this change was made to reflect a recent court decision. This court decision, supplied by the Town with their September 13, 1996 letter, involved the ownership issue of other waterfront land that was similar to the Taxpayers' land (a strip of land on water, separated by a road with a house lot across the road).

When the Town performed the assessment update in 1993, the Town did not, however, use the \$142,750 assessment but rather used the \$173,200 assessment. The Town was unable to explain why this was done. Additionally, the Town applied a 1.395 adjustment factor during the assessment update, and this adjustment was similar to the adjustment on lakefront properties. Given the issue concerning the

location across from the waterfront, it would appear to be more appropriate to use the lake-influence adjustment rather than the waterfront adjustment. However, using the \$142,750 assessment divided by the 1.68 lake influence adjustment, would result in a \$85,000 assessment which appears too low.

The board, applying its judgement, concluded the Property had a value of between \$95,000 and \$105,000. The board selected the \$105,000 value because the burden of proof is on the Taxpayers to show what the proper assessment should be and because we conclude the \$105,000 best reflects the Property's market value. The \$105,000 was then adjusted by the 1.04 equalization ratio, resulting in an \$109,200 ordered assessment.

If the taxes have been paid, the amount paid on the value in excess of \$109,200 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.

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

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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

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Michael P. and William J. Kearns, Taxpayers; and Chairman, Selectmen of Bristol.

Date: October 17, 1996

Valerie B. Lanigan, Clerk

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