

Marc N. and Roberta L. Girard

v.

Town of Pembroke

Docket No.: 15024-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$143,250 (land, \$53,400; building, \$89,850) on a single-family home on a 1.0-acre lot (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. 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 this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) the Property has been on the market for over a year;
- 2) over half of the land is ledge;
- 3) the assessment was disproportionate to neighbors and abutters; and

4) several realtors' comments suggested a selling price between \$110,000 and \$130,000.

The Town argued the assessment was proper because:

- 1) the Property has a unique setting high above the river on a peninsula;
- 2) the Property has water-frontage on the Suncook River and cannot be compared to two-family homes not on the water;
- 3) the Taxpayers' have failed to present an appraisal, only opinions of value, which have little or no credibility;
- 4) as of December 1994 the Property was on the market for \$139,900 reduced from the \$150,000 asking price; and
- 5) the Taxpayers' failed to prove any disproportionality.

BOARD FINDINGS

Based on the evidence, the board finds the proper assessment to be \$138,800. The Taxpayers submitted a group of 7 broker opinions which were based upon a group tour of the Property. These opinions ranged in value from \$110,000 to \$130,000. While these opinions are of little probative value to the board because they lack any evidence of comparable sales to support their findings, the brokers collectively agreed that the Property suffers a negative value for only having two bedrooms. Based on its experience and judgment, the board finds that this fact does limit the Property's market appeal and some functional adjustment is required¹. The board has determined that a 5%

¹ The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b); Appeal of Nashua, 138 N.H. 261, 264-265 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

functional adjustment to the house is proper.

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The board questions whether there is potential for subdivision as argued by the Town given the location of the house on the lot. However, no evidence was submitted to show that the lot could not be subdivided. The board finds no further adjustments are warranted because the Taxpayers did not present any credible evidence of the Property's fair market value. To carry their burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessment generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

Neither party challenged the Department of Revenue Administration's equalization ratio of 104% for the 1994 tax year for the Town of Pembroke. This means assessments were generally higher than market value. The board finds the proper assessment to be \$138,800 for an equalized value of \$133,500.

If the taxes have been paid, the amount paid on the value in excess of \$138,800 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 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 "reconsideration 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

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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. This, 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

Paul B. Franklin, Member

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Marc N. and Roberta L. Girard, Taxpayers; and Chairman, Board of Selectmen.

Date: June 24, 1996

Valerie B. Lanigan, Clerk

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