

Ray H. Kliewer

v.

Town of Swanzey

Docket No.: 15092-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$190,600 (land, \$30,900; building, \$159,700) on 3.58 acres with a home (the Property). The Taxpayer 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 denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or was unlawful, resulting in the Taxpayer 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 Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

- 1) there are errors of square footage on the assessment-record card;
- 2) the average assessments of comparable properties (year built, gross living area, not on lake, etc) on the market demonstrate a difference in the assessment of \$31,267;

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- 3) a fair market value as of April 1, 1994 would have been \$179,600 based on the average market prices of comparables in Town; and
- 4) an assessment of \$147,296 (building, \$116,396; land, \$30,900) would be more in line considering the actual gross living area.

The Town recommended a revised assessment of \$182,400 to correct the gross living area and quality of the basement area. The Town argued the revised assessment was proper because:

- 1) the Taxpayer's comparables are inferior (modular ranch, average quality colonial);
- 2) the Property had been listed for \$224,000;
- 3) an analysis of several comparable (but slightly inferior) sales on a price-per-square-foot basis supports the revised assessment; and
- 4) the Taxpayer's cost to construct the house in 1990 of \$175,000 and the purchase of the lot in 1986 for \$29,000 supports the revised assessment.

BOARD FINDINGS

The board finds the revised assessment of \$182,400 (Land \$31,900, Building \$150,500) as determined by the Town to be the correct assessment.

The Taxpayer based a significant portion of the appeal on incorrect

measurements on the property record card and offered revised measurements to correct the discrepancies. However, the measurement process was performed incorrectly by the Taxpayer. In order to accurately determine the gross living area of a residential dwelling it is necessary to measure the exterior perimeter of the dwelling. It is not acceptable to take interior measurements of individual rooms and then add them together. The tenth edition of The Appraisal of Real Estate by the Appraisal Institute addresses this issue as follows: "The agencies use gross living area to measure single family residences.... Gross living area is defined as the total area of finished, above-grade residential space. It is calculated by measuring the outside perimeter of the structure and includes only finished, habitable, above-grade living space".

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The Taxpayer compared the Property to two properties on East Shore Drive that did not have lake views or lake access, however, both of these properties were lower quality dwellings. The property record cards for each of these homes indicated the lower quality through the grade factor rating of average +10. This grade is lower than the Property's average +20 grade factor. In order to show disproportionality, the Taxpayer should have used other properties with an average +20 grade factor.

The Taxpayer attempted to show a disproportionate assessment by comparing the Property's assessment to the average assessment of several other properties in Swanzey. This is inappropriate as averaging property values, as done by the Taxpayer, does not necessarily prove "disproportionality"; it only proves that

the Taxpayer's property is assessed more than the average property. Appraisals are not averages; rather they are the correlation of general sales data to the unique characteristics of a specific property. Similarly averaging sales, as done by the Taxpayer, is not a conclusive method of establishing market value since averaging ignores the unique characteristics of properties. Rather, analyzing, comparing, and weighing sales data and then correlating the most pertinent aspects of the sales to the subject property arrives at the best indication of market value.

The board notes that the property was listed for sale for \$224,000 and had a cost to build of approximately \$204,000. Although the exact dates of construction or marketing are not pinpointed, these figures are some evidence that the Property is not overassessed.

If the taxes have been paid, the amount paid on the value in excess of \$182,400 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 and 1996. 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.

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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 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. 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, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Ray H. Kliewer, Taxpayer; and Chairman, Board of Selectmen.

Date: February 13, 1997

Valerie B. Lanigan, Clerk