

Scott M. Brown

v.

Town of New London

Docket No.: 15225-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$167,800 on a 4.4-acre lot with a house (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried his burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property was purchased April 1994 for \$139,000 based on negotiations which considered the highway noise, manure spreading on an adjacent parcel, minerals in the water, location on a private way, and steepness of two acres;
- (2) an April 1994 appraisal estimated a \$140,000 value;
- (3) approximately two acres are undevelopable due to steepness;
- (4) the assessment should have been \$145,950 ($\$139,000 \times 1.05$); and
- (5) the Town's assessments were generally poorly correlated to market value.

The Town argued the assessment was proper because:

- (1) the Taxpayer failed to show the assessment was incorrect;
- (2) the Town assessed the Property in line with its market value and in a manner similar to other assessed comparables;
- (3) the appraisal was influenced by the Property's purchase price (The Town also discussed other issues with the appraisal.);
- (4) the two-acre rear lot is separately saleable and developable;
- (5) the rear acreage received a -20% adjustment;
- (6) the correct assessment should have been \$169,900; and
- (7) one sale does not establish a property's market value.

Board's Rulings

Based on the evidence, we find the proper assessment to be \$156,800 (land \$76,100; buildings \$80,700).

This case is an example of an often occurring challenge of reconciling evidence of an apparent arm's-length transaction of the subject property with other general market information and specific physical features or factors of a property that affect value.

The board considered the sale of the Property in April 1994 for \$139,000 after being on the market for six months. While this is some evidence of the Property's market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). However, where it is demonstrated that the sale was an arm's-length market sale, the sales price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). Consequently, the board gives some weight to the market value indication of the sale but does not find it conclusive

evidence of the Property's market value. The Taxpayer also submitted his appraisal done for lending purposes (Taxpayer Exhibit #2) which indicated a market value of the Property at \$140,000. The board, as stated during the hearing, gives this appraisal very little weight as the appraiser mentions and was fully cognizant of the listing price of \$149,000 and the contract price of \$139,000 at the time of the appraisal.

The board also reviewed the other sales and assessment-record cards submitted by both parties to get a sense of how the Taxpayer's purchase price corresponds with other market indicators and other similarly assessed properties. The board agrees with the Taxpayer that due to some of the Property's unique factors, which will be discussed in the next paragraph, most of the sales submitted by the Town are not comparable without some adjustment. However, the sale of the adjoining property (Hoban) for \$192,900 in March 1995 gives some indication of the general market range for this area. The board does realize that the Hoban property appears to be of better quality even before the renovation that occurred subsequent to the purchase and that it is more sheltered from the noise and effect of Interstate 89 and has direct access onto to a town road. However, the Hoban sale, even considering these differences, causes the board to give less weight to the Taxpayer's purchase as conclusive evidence of market value.

Lastly, the board reviewed the various factors testified to as affecting the Property's value. Specifically, those factors are: the ability for the Property to be subdivided, the dwelling's access by a private right-of-way, the effect of Interstate 89 on the improved and unimproved portions of the Property, the steepness and developability of the unimproved portion of the

Property on Goose Pond Road and the manure pile and spreading on an abutting property. In short, the board finds that all these factors, with the exception of the last one, are factors that need to be considered and would affect the value based on the evidence submitted to the board. The Property has adequate frontage and acreage to meet the dimensional requirements of the Town's zoning ordinance to be subdivided into two lots. The Town's assessment methodology appears to recognize this second lot potential. However, the board finds the Town's factors for the 150 feet of frontage for the "second site" on Goose Pond Road does not adequately recognize the steepness of the terrain and its proximity to Interstate 89. Therefore the board concludes that the condition factor for that portion of the land calculation be reduced from 80 to 60.

The board finds the improved site is accessed by a private right-of-way. The increased maintenance costs associated with accessing that site as opposed to one located on a publicly maintained road is something the market would generally recognize. Therefore, the board concludes the site value on the improved portion should have a condition factor of 90.

The board finds that the Taxpayer's argument of the manure pile and spreading on the adjoining property was not substantiated as to its frequency, duration or magnitude for the board to conclude it is an objective factor the market would recognize.

Conclusion

The resulting total assessment based on these land adjustments is \$156,800 which when equalized by the Town's 1994 equalization ratio of 1.05 provides an indicated market value of \$149,300 ($\$156,800 \div 1.05$). This

Docket No.: 15225-94PT

revised assessment and market value indication is reasonable based on all the evidence submitted by both parties. It is arrived at not by the strict application of one sale but rather by a weighing of the evidence and the application of judgement. "Given all the imponderables in the valuation process, [_j]judgement is the touchstone_." Public Service Co. v. Town of Ashland, 117 N.H. 635, 639 (1977).

If the taxes have been paid, the amount paid on the value in excess of \$156,800 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 "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

Page 6

Brown v. Town of New London

Docket No.: 15225-94PT

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 Scott M. Brown, Taxpayer; and Chairman, Selectmen of New London.

Date: October 28, 1996

Valerie B. Lanigan, Clerk

0006