

J. Robert and Constance Gibbens

v.

Town of Center Harbor

Docket No.: 15241-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$258,800 (land \$39,300; buildings \$219,500) on a 1.4-acre lot with 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 their burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Town's 1996 reassessment estimated the Property's value at \$233,800;
- (2) the Property was listed in 1995 for \$249,000;
- (3) the realtor who listed the Property in 1995 estimated its value at \$209,000;
- (4) an estimate of value by the cost approach was \$233,163;

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(5) an estimate of value by the sales approach of properties in the Woodridge area of town was \$233,441;

(6) a 1994 appraisal, before refurbishing of the Property, estimated its value at \$172,000; and

(7) the Taxpayers purchased the Property in 1994 from a bank for \$172,000; while the purchase was from a bank, it was somewhat representative of the market because \$40,000 of refurbishing was done after the sale, and the opinions of value by the cost and sales approaches are inclusive of the refurbishing.

The Town argued the assessment was proper because:

(1) the 1994 transfer for \$172,000 also included the arrearage of two year's taxes;

(2) the Mountain Lakes Appraisal has several flaws, e.g., the comparables were ranches, the pool was not adjusted for, the cost approach underestimated the site value and proper locational adjustments were not made; and

(3) the Property was proportionately assessed to other properties in the general neighborhood.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$180,000.

This assessment is ordered based on a market value finding of \$225,000 and the Town's 1994 equalization ratio of .80.

Market Value

A number of indications of market value were presented by the Taxpayers' agent to the board including: 1) the Taxpayers' purchase of the Property in 1994 for \$172,000 plus \$5,500 in back taxes; 2) a Mountain Lakes financing Page 3
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appraisal for \$172,000; 3) the Taxpayers' agent's sales and cost approaches to

value; 4) a realtor's listing of the Property in 1995 for \$249,000 and the same realtor's opinion of market value of \$209,000; and 5) the Town's 1996 assessment of \$233,800 performed by the Department of Revenue Administration (DRA).

In arriving at an estimated market value of \$225,000, the board gives some weight to the DRA's 1996 assessment and the realtor's listing of the Property at \$249,000. The board also considered the evidence that as of April 1, 1994 the Property needed some "refurbishing" for it to be in the condition as appraised by DRA in 1996 and as listed by the realtor in 1995. While, little evidence was received as to the detailed nature or extent of the \$40,000 refurbishing, the board finds some adjustment is warranted.

The board gave little weight to the Taxpayers' purchase of the Property because it was purchased from a bank following foreclosure. Further, the board gives no weight to the Mountain Lakes appraisal done for financing purposes because the appraiser was knowledgeable of and, in fact, included in his appraisal the agreed upon sales price.

The board gives little weight to the Taxpayers' agent's sales and cost approach estimates because, as he stated, his adjustments in those calculations were strictly clerical and did not involve any appraisal judgment. While the agent's comment was possibly meant to indicate that his subjective opinion did not cloud the value conclusion, estimates of value arrived at by the three approaches to value should be performed by an individual knowledgeable in the market and based on reasonable market

adjustments. "Clerical" adjustments based on assessment calculations and cost manuals need to be reviewed to determine if they are reflective of market value.

Equalization Ratio

The Town argued the town-wide ratio of .80 was not representative of the properties in the Taxpayers' neighborhood and therefore should not be applied to any market value finding. However, the board notes Appeal of Andrews, 136, N.H. 61 (1992) and Appeal of City of Nashua, 138, N.H. 261 (1994) state municipalities can have only one general level of assessment or ratio and, if a municipality at hearing does not agree with the ratio determined by DRA, it should proffer its own ratio. In this case, the Town submitted no other evidence to a different ratio. Consequently, the board finds the 1994 ratio as determined by DRA is the appropriate adjustment to be applied to the market value finding of \$225,000.

Costs

The board denies the Taxpayers' agent's request for costs in the amount of \$56.63 for printing and copying, etc. It's within the board's discretion to assess costs upon a finding of bad faith. In this case, however, the board finds the Town's actions were based more on a misunderstanding of the role of the general level of assessment (ratio) and how it affects the determination of proportional assessments. As cited earlier, the New Hampshire Supreme Court has addressed this issue recently in the Appeal of Andrews and the Appeal of City of Nashua. Copies are attached.

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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

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to David Irwin, Agent for J. Robert and Constance Gibbens, Taxpayers; and Chairman, Selectmen of Center Harbor.

Date: September 16, 1996

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Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Town's" request for clarification concerning whether the board's 1994 ordered assessment also applies to 1995. (The decision would not apply to 1996 because the Town was completely revalued for tax year 1996. See RSA 76:17-c.)

The board's 1994 ordered assessment should be used by the Town for 1995. See RSA 76:17-C. However, the Town is authorized by RSA 76:17-c to make good faith adjustments to the ordered assessment for the work done on the property after 1994. The evidence concerning the property's 1994 condition and the work done in 1995 was sketchy. Nonetheless, in arriving at the 1994 assessment, the board assumed the property had not yet had the refurbishing. The Taxpayer's failure to file a 1995 appeal does not affect the Taxpayer's right to have the 1994 ordered assessment carried forward to 1995 with good faith adjustments.

For 1995, the Town shall use the 1994 ordered assessment with good faith adjustments. If the Taxpayer disagrees with the Town's adjustments, TAX 203.05 spells out the Taxpayer's remedy.

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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 David Irwin, Agent for J. Robert and Constance Gibbens, Taxpayers; and Chairman, Selectmen of Center Harbor.

Date: October 17, 1996

Valerie B. Lanigan, Clerk

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