

Robert E. and Jean M. Reynolds

v.

City of Portsmouth

Docket No.: 15527-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1994 adjusted assessment of \$98,900 (land \$27,400; buildings \$71,500) on a .413-acre lot with a house (the Property). The Taxpayers and the City 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 was unlawful, resulting in the Taxpayers 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 Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) the Property's proximity to the new shopping mall has a negative impact on the Property's value due to excessive traffic, noise, traffic jams, commercial construction, etc.;

Page 2

Reynolds v. City of Portsmouth

Docket No.: 15527-94PT

(2) the view across the street was once trees but has since been cleared for construction;

(3) the road was widened and the embankment removed to accommodate the new five-lane highway, and the Property's access is now dangerous because of high-speed traffic and poor driveway design;

(4) the City made one street into a dead-end road, and now the traffic cannot be bypassed;

(5) 1,400 vehicles pass the Property in a one-hour period; and

(6) the Property's market value on April 1, 1994 was \$85,000 due to the Property's location.

The City argued the adjusted assessment was proper because:

(1) the assessment was adjusted to address the heavy traffic and the Property's less desirable location;

(2) the Property's land value is 15-30% less than lots located on roads with even less traffic than the Property's road;

(3) the building value was adjusted 5% for economic obsolescence;

(4) the commercial construction was not present on April 1, 1994, but the dust, traffic, etc. has existed for years and is reflected in the assessment;
and

(5) the lack of sales in the area is the result of the poor market in the

state and not the heavy traffic.

On February 6, 1997 the board viewed the Property (from its exterior), the Property's Route 1 neighborhood and the general residential neighborhood behind the Property. Neither party was present during the board's view. The board took the view to have a better understanding of the parties' arguments, the quality of residences in the area and the general neighborhood inasmuch as both parties indicated there had been no market data in the area.

Page 3
Reynolds v. City of Portsmouth
Docket No.: 15527-94PT

BOARD'S RULINGS

Based on the evidence, the board finds the proper assessment to be \$88,800 (land \$24,300; buildings \$64,500). This assessment is arrived at by applying an additional 10% economic depreciation to both the land and the residence.

Both parties stated that there has been no sales of residential properties fronting on Route 1 to indicate what effect the traffic and noise may have. The City is to be commended for recognizing the impact of the location by applying the economic depreciation it did. However, the board concludes that an additional 10% depreciation is warranted.

The board arrived at this conclusion by estimating what the Property would have been assessed if it had been located on a quieter side street. The City stated the land base rates for such less heavily traveled streets were 15% to 30% higher than on Route 1. Consequently, factoring the land value and

removing the economic depreciations the City gave on both the land and building indicates the assessed value would have been \$113,000 to \$118,000 if the house were located in a quieter neighborhood. Based on this calculation and the board's view of the Property and neighborhood, the board determines that a greater differential (economic depreciation) needs to be applied to the Property to measure the impact of the heavy traffic and the nearby commercial development. The board also considered when viewing the Property whether a zoning change and assemblage of lots would be reasonable in the Property's general neighborhood. However, it is very clear based on the size and depth of the residential lots that such a change would be economically unfeasible due to the number of residential lots that would have to be assembled for a commercial use even if a zoning change could be obtained on the east side of Route 1.

Page 4
Reynolds v. City of Portsmouth
Docket No.: 15527-94PT

If the taxes have been paid, the amount paid on the value in excess of \$88,800 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 City has undergone a general reassessment, the City shall also refund any overpayment for 1995 and 1996. Until the City undergoes a general reassessment, the City 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 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.

Thus, 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

Ignatius MacLellan, Esq., Member

Page 5
Reynolds v. City of Portsmouth
Docket No.: 15527-94PT

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert E. and Jean M. Reynolds, Taxpayers; and Chairman, Board of Assessors, City of Portsmouth.

Date: February 26, 1997

Valerie B. Lanigan, Clerk

0006