

Carolyn and Clay P. Bedford, Jr.

v.

Town of Stratham

Docket Nos.: 15655-94PT and 16349-95PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 adjusted assessment of \$597,800 and 1995 adjusted assessment of \$595,800 on a 2.75-acre lot with a plaza (the Property). For the reasons stated below, the appeals for abatement are granted.

The Taxpayers have the burden of showing the assessments were 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 assessments were excessive because:

- (1) the Property was purchased March 1994 for \$425,000, which represented market value;
- (2) the Property has some visibility problems; and
- (3) an appraiser estimated the Property's value at \$415,000 for 1994 and

\$420,000 for 1995.

The Town argued the assessments were proper because:

- (1) they were supported by an income analysis;
- (2) the attic adds \$18,300 in assessed value to the Property, and there is probably some expandable land, both of which were not captured in the income approach; and
- (3) the Property was worth approximately \$500,000.

Board's Rulings

Based on the evidence, the board finds the Property to have a market value of \$425,000, which results in a \$412,250 1994 assessment ($\$425,000 \times .97$ ratio) and a \$408,000 1995 assessment ($\$425,000 \times .96$ ratio). The board bases this conclusion on the Taxpayers' purchase price and the Taxpayers' appraisal.

The Taxpayers purchased the Property in March 1994 for \$425,000. The board questioned the Taxpayers about the circumstances surrounding the sale. The Taxpayers and the seller were not related, the Taxpayers had looked at several other properties, the Property was listed through a reputable realtor, and the parties negotiated the final price. The board concludes the sale price represents a market transaction. Where it is demonstrated that a sale was an arm's-length market sale, the sale price is one of the "best indicators of the property's value." Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988). The Town did not introduce any evidence to question the market nature of the Taxpayers' purchase. The Town, did, however, question whether the Taxpayers had given adequate consideration for the possible expansion into the attic and the possible further developability of the lot. However, the board finds that those factors, to the extent a reasonably prudent purchaser would have considered them, were considered in the sales price.

The Taxpayers also presented a credible and professional appraisal by Mr. Cowall. Mr. Cowall estimated a \$415,000 1994 value and a \$420,000 1995 value. Mr. Cowall used the income approach, and he was able to adequately explain his assumptions, data and analysis. The board finds Mr. Cowall's

appraisal report to be supportive of the sales price. To the extent the Town presented a revised income analysis, the board finds Mr. Cowall's analysis to better represent the proper analysis for the Property.

If the taxes have been paid, the amount paid on the value in excess of \$412,250 in 1994 and \$408,000 in 1995 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 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.

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 John G. Cronin, Esq., Counsel for Carolyn and Clay P. Bedford, Jr., Taxpayers; and Chairman, Selectmen of Stratham.

Dated: December 20, 1996

Valerie B. Lanigan, Clerk

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ORDER

On January 14, 1997 the Town filed a motion for rehearing (Motion). On January 20, 1997 the Taxpayers filed an objection to the Motion. The Motion requested a rehearing to present further evidence on the sale of the Property.

The board denies the Motion. TAX 201.37 (e) states that evidence that could have been presented at the original hearing but wasn't should not be a basis for a rehearing. The Town had adequate time at the hearing to present testimony about the sale and to cross examine the Taxpayers relative to the conditions of the sale. Further, the board asked numerous questions about the Taxpayers' purchase of the Property. Therefore, there does not appear to be any need for the board to grant leave for new evidence to be presented at a rehearing.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John G. Cronin, Esq., Counsel for Carolyn and Clay P. Bedford, Jr., Taxpayers; and Chairman, Selectmen of Stratham.

Date: January 27, 1997

Valerie B. Lanigan, Clerk

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