

Charles F. and Rebecca F. McGuire

v.

Town of Amherst

Docket No.: 15826-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$367,400 (land \$115,000; buildings \$252,400) on 5.8-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 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 total cost of construction (land and building) was \$302,900;
- (2) the house is the lowest cost home in the neighborhood;

- (3) there is a severe problem with water in the basement, siding problems (cedar bleed), the roof leaks and a problem with radon;
- (4) the lawn was not installed until 1996; and
- (5) a comparable home, listed for \$349,900, sold for \$304,000; this home is larger than the Property, has an additional bath and masonry on the front.

Page 2

McGuire v. Town of Amherst

Docket No.: 15826-94PT

The Town argued the assessment was proper because:

- (1) raw land in the development sold for \$95,000 per lot in the 1993 to 1995 time frame;
- (2) the subdivision was the number 1 development in the Town in 1994;
- (3) trending the Taxpayers' 1992 construction costs indicates a value of \$350,800;
- (4) an analysis of sales indicates the grade factor should be adjusted by 10% to be consistent with like properties; and
- (5) the assessment should be revised to \$342,200.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$332,300 (land, \$110,000; building, \$222,300). This assessment is based on (1) the Town's recommended reduction in the grade of the house to .90; (2) an additional 2% functional depreciation on the improvements for the reduced utility of the wet basement; and (3) the lawn not being installed as of April 1, 1994.

The board finds the Town's revision of the building grade to be in keeping with the comparable properties submitted by the parties.

Specifically, the two most comparable properties, 40 The Flume and 3 The Flume, were both of slightly lesser quality, similar to the Property, than most other houses at The Flume. The assessment card submitted for one of the two comparables, 3 The Flume, has the building graded at .90 as recommended by the Town.

In addition to the grade revision, the board finds the drainage problems and onset of the wet basement existed to an extent in 1994 that it would be a factor in the Property's value. The 2% additional functional depreciation for the reduced utility of the basement reduces the assessment approximately \$5,000. Further, the testimony and photographs show that the Taxpayers' lawn and landscaping were not in place in 1994. While the Taxpayers submitted no evidence as to the remaining costs to create the lawn and landscaping, the

Page 3

McGuire v. Town of Amherst

Docket No.: 15826-94PT

board has reduced the lot assessment by \$5,000 as an estimate for the completion of the lawn which was part of the Taxpayers' construction contract.

Certainly, any purchaser of this Property in 1994 and 1995 (the Taxpayers testified the lawn was installed in 1996) would consider the lack of lawn a factor as to what they would pay for the Property.

The board finds that both the radon issue and the "cedar bleed" had not been quantified in 1994. Consequently, the board was not convinced that they would have been factors affecting value in 1994.

Lastly, the board finds the Town's trending of the construction costs to \$235,800 (which includes building construction and all site work) as of April 1, 1994 to be reasonable. Adding to that an undeveloped lot value of \$95,000 results in an estimated market value of \$330,800, quite similar to the assessment the board has found.

If the taxes have been paid, the amount paid on the value in excess of \$332,300 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, 1996 and 1997 with any good-faith adjustments applicable to those subsequent years. 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

Page 4
McGuire v. Town of Amherst
Docket No.: 15826-94PT

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

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Charles F. and Rebecca F. McGuire, Taxpayers; and Chairman, Board of Selectmen, Town of Amherst.

Date: December 8, 1997

Valerie B. Lanigan, Clerk

0006

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Town of Amherst

Docket No.: 15826-94PT

ORDER

This "Order" responds to the "Town's" "request" for clarification filed on December 30, 1997 and the "Taxpayers'" January 5, 1998 response to it. While the board does not have jurisdiction over subsequent years at this time (TAX 203.05 (d)), it can tell the Town what it considers a good-faith adjustment and how it would probably rule if the Taxpayers filed a motion for enforcement of the board's decision (TAX 203.05 (j)).

In its request, the Town stated its opinion that: 1) the \$5,000 adjustment for the lawn should be for the 1994 and 1995 tax years only; and 2) the additional 2% functional depreciation on the improvement should be for the 1994 tax year only.

Again, while the board is not ruling on this matter at this time, if a motion for enforcement is filed, the most probable ruling would be:

1) The Taxpayers testified that the lawn was installed in 1996 (after April 1, 1996); therefore, the \$5,000 deduction should only apply to tax years

1994, 1995 and 1996.

2) While the Taxpayers testified that a sump pump had been installed in the basement, the testimony was the utility of the basement was significantly restricted and was not cured by the sump pump. Given that evidence, the 2% functional depreciation on the improvement should be carried forward in subsequent years.

Page 2

McGuire v. Town of Amherst

Docket No.: 15826-94PT

Lastly, the board reminds the parties of the Town's responsibility to annually review assessments for warranted revisions (RSA 75:8) and of the Taxpayers' ability to file subsequent appeals (RSA 76:16-a and 17).

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Charles F. and Rebecca F. McGuire, Taxpayers; and Chairman, Board of Selectmen, Town of Amherst.

Date: January 14, 1998

Valerie B. Lanigan, Clerk

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