

John E. and Karen A. Mead

v.

Town of Newbury

Docket No.: 15980-95PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$194,200 (land \$161,000; buildings \$33,200) on a .34-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 Property was purchased in June 1995 for \$122,500;
- (2) an abutting property with an artesian well, standard septic system and

larger living area sold in February 1995 for \$125,000;

(3) a May 1995 appraisal estimated the Property's value to be \$125,000; and

(4) the actual selling price was consistent with other offers made during the period the Property was listed for sale.

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The Town stated the assessment should be revised because:

(1) the topography was steeper than normal;

(2) the proximity of the cottage to Route 103 had an adverse affect on the value; and

(3) the driveway easement across the Property to the abutter had not been addressed in the previous assessment.

**Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$126,250. The assessment is based on a market value of \$125,000 and the 1995 Town of Newbury equalization ratio of 1.01.

The Taxpayers purchased the Property in February 1995 for \$122,500 in an arm's-length transaction. 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). An appraisal, with an effective date of May 11, 1995, of the Property estimated the market value to be \$125,000. One of the comparable

sales used in the appraisal was of an abutting property. This property sold in February 1995 for \$125,000. The Taxpayer testified that this abutting property had a larger gross living area, an on-site artesian well and regular septic system. These characteristics were superior to the Property's small living area, lake water supply and steel holding tank. Additionally, there is an access easement across the Property to the abutting property that the neighbors use for vehicular traffic.

The Town testified that to some degree the conditions discussed above were adjusted for in the assessment. However, after reviewing the assessment-record card and listening to the testimony at the hearing, it was evident that further adjustments were necessary to accurately depict the Property. These adjustments are as follows: 1) an additional 10% should be applied to the

topography

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adjustment to reflect the steep slope from the dwelling to the waterfront;

2) the close proximity of the house to N.H. Route 103 and the presence of the access easement to the abutting property requires that an additional 30% be added to the market adjustment. Making these changes to the land assessment section on the assessment-record card yields a new indication of value for the land of \$92,400. Combining this new land assessment to the building assessment of \$33,200 gives a total assessed value of \$125,600. Given the revised assessed value and the Town of Newbury's equalization ratio of 1.01 for 1995 an equalized market value estimate of \$124,350 is calculated. It is clear to the board that the revised assessment is supporting evidence for and gives credence to the selling price being a good estimate of market value.

If the taxes have been paid, the amount paid on the value in excess of

\$126,250 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

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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

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John E. and Karen A. Mead, Taxpayers; and Chairman, Selectmen of Newbury.

Date: April 25, 1997

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Valerie B. Lanigan, Clerk

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