

David and Lorraine Gallagher

v.

Town of Bristol

Docket No.: 15983-95PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$31,250 on vacant, 2.17-acre lot (the Property). The Taxpayers also own, but did not appeal, another lot in the Town with a \$68,650 assessment. 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 for \$5,100 at a sealed bid sale;

- (2) there is no town water or sewer service available;
- (3) the Town does not maintain the road; and
- (4) based on comparable sales and listings, the market value is \$10,000 as of April 1, 1995.

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The Town argued the assessment was proper because:

- (1) the lot is buildable and may be subdivided;
- (2) sewer is available on Chestnut Street extension that would just have to be extended by the owner of the Property; and
- (3) the assessment is based on the revised 1988 assessment that was adjusted in 1995 by a 1.52 factor derived by a town-wide ratio study.

The board's review appraiser, Mr. Bartlett, inspected the property, reviewed the property-assessment card, reviewed the parties' briefs and filed a report with the board. This report concluded the proper market value range should be \$16,000 to \$19,000. Note: The review appraiser's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the review appraiser's recommendation.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$18,350. This assessment is based on a market value finding of \$17,000 and the Town's 1995 equalization ratio of 1.08 ($\$17,000 \times 1.08$).

The board finds the best evidence is the board appraiser's market value range of \$16,000 to \$19,000 contained in his May 5, 1997 report. Mr.

Bartlett's report was based on reviewing the sales and listings that were submitted as evidence during the hearing and viewing the Property and some of the comparables.

Based on the sales submitted by the parties and as further described in Mr. Bartlett's report, the board notes the Property has some offsetting factors that make valuing the Property difficult. First, based on the photographs in Mr. Bartlett's report, the lot appears to be of reasonable topography and quite developable, and in some instances, superior to the comparables submitted by the Taxpayers. However, the Property is accessed by a private road that is undeveloped and shared with other property owners. Mr. Bartlett's photographs indicate that this road would need substantial

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improvements to service the Property and other lots beyond. Sewer is available nearby but would have to be extended at the owner's expense to the Property. However, the board also notes that the lot by being over two acres in size, may have the potential of having on-site sewer facilities constructed if developed.

The board finds the Taxpayers' opinion of market value is too low based on the Property's reasonable development potential and the inferior nature of some of the submitted sales and listings. Likewise, the board find the Town's assessment and arguments contained in the May 27, 1997 letter responding to Mr. Bartlett's report to be too high. Most of the sales contained in its May 27, 1997 letter did recently sell for less than their previous sales in the late 1980's and early 1990's. This is not so much evidence that the recent sales are not good sales necessarily but that the market has definitely changed within that time period.

If the taxes have been paid, the amount paid on the value in excess of \$18,350 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

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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

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to David and Lorraine Gallagher, Taxpayers; and Chairman, Selectmen of Bristol.

Date: June 18, 1997

Valerie B. Lanigan, Clerk

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