

William J. Pearsall

v.

Town of Richmond

Docket No.: 16025-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$54,200 on a vacant, 33-acre lot (the Property). The Taxpayer also owned, but did not appeal, five other properties in the Town (some in current use) with a combined \$189,100 assessment. For the reasons stated below, the appeal for abatement is granted.

The Town did not appear but consistent with board rule TAX 202.06(h), the Town was not defaulted. This decision is based on the evidence presented to the board.

The Taxpayer has the burden of showing the assessment was disproportionately high or was unlawful, resulting in the Taxpayer 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 Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried

this burden.

The Taxpayer argued the assessment was excessive because:

- (1) he purchased the Property in September 1995 for \$35,000 through a realtor and after negotiations;
- (2) the price included an estimated \$5,000 to \$6,000 of timber (\$7,000 was actually taken off); and

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- (3) he estimated the land portion of the purchase price was \$30,000.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$41,700, which is based on a market finding of \$30,000.

The Taxpayer testified the Property's purchase price was \$35,000 in September 1995. The Taxpayer also stated that he estimated that \$5,000 to \$6,000 of that purchase price was for timber on the land. Where it is demonstrated that a 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).

The board finds the Taxpayer's testimony concerning the \$35,000 purchase price, which included \$5,000 consideration for timber, accurately reflected the taxable real estate. The Taxpayer described the circumstances surrounding his purchase, his timber estimate and the actual timber harvest (\$7,000). Under RSA 79:2, timber is not taxable as part of the property tax, and therefore, to calculate the proper assessment, the board deducted the estimated timber value from the purchase price, resulting in a \$30,000 fair market value finding and a \$41,700 assessment.

The Town did not submit anything to refute the Taxpayer's presentation.

If the taxes have been paid, the amount paid on the value in excess of \$41,700 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

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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

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to William J. Pearsall, Taxpayer; and Chairman, Selectmen of Richmond.

Date: March 11, 1997

Valerie B. Lanigan, Clerk

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