

William J. Janoch

v.

Town of Peterborough

Docket No.: 16040-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$205,100 (land \$26,600; buildings \$178,500) on a .47-acre lot with a single-family home (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or 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) an October 1994 appraisal (Chapman) estimated the value to be \$165,000;
- (2) a March 1995 appraisal (Rockwood) estimated the value to be \$167,000;

(3) one-half interest in the home was purchased from his ex-wife in October 1995 (agreed on one-half of \$166,000);

(4) comparable sales were assessed lower than the Property;

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(5) comparable properties in the neighborhood were assessed lower than the Property; and

(6) the fair market value as of April 1995 was \$166,000.

The Town argued the assessment was proper because:

(1) the Property was purchased in 1992 for \$177,500 from a bank following foreclosure; neither this purchase nor the buy-out from the Taxpayer's ex-wife were arm's-length transactions;

(2) the building is very similar to the 13 High Street property (Chapman comparable #3), but the Property sits above Main Street, has a good view and does not have a school behind it;

(3) the Chapman appraisal used 3,284 square feet when the gross living area is actually 4,064 square feet;

(4) Chapman's comparable buildings 1 and 2 are of lesser quality and comparable 2 was an estate sale;

(3) a reworking of the Chapman appraisal (square footage, condition) indicated a value range of \$176,400 to \$212,400 which supports the assessment; and

(4) only the cover letter of the Rockwood appraisal was submitted therefore the board should not give the appraisal any weight.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$185,400, which is based on a market finding of \$180,000 ($\$180,000 \times 1.03$ assessment ratio). The board's market finding is based on reviewing the Taxpayer's information and revising the Town's assessment calculation.

The board makes this finding based on the following.

1) The Taxpayer's market value information consisted of a \$165,000 Chapman appraisal and a \$167,000 Rockwood appraisal. Both appraisals were prepared for determining the Property's value for a divorce. The board was provided with the Chapman appraisal, but the board did not admit the Rockwood

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appraisal because the Taxpayer did not exchange the appraisal with the Town before the hearing. Therefore, the board is left with reviewing the Chapman appraisal.

The Chapman appraisal provided an adequate description of the Property and provided three comparable sales in the Town. However, the board did not accept the Chapman value for two reasons. First, the board had concerns about the sufficiency of Chapman's adjustment for the Property's barn. The photographs show a barn that is in good shape, and the board does not think that calling the barn a two-car garage (as Chapman did) adequately captured the barn's value. Comparables 1 and 2, based on the photographs, apparently only had normal garages. The board finds Chapman's adjustments to comparables 1 and 2 did not accurately reflect the Property's superior barn. Comparable 3 has a barn, but the board did not receive sufficient information to determine how that barn compared to the Property's barn.

Second, Chapman did not include any additional value for the area in the house addition that the Taxpayer testified was within the house structure but was not improved as living area. This area constituted approximately 708 square feet (the Addition Space). The Chapman appraisal listed the gross living area at 3,284 square feet, which is approximately the same as the Town's gross living area as originally calculated (4,064 square feet) less the 708 square feet for the Addition Space. Thus, the Chapman appraisal did not make any adjustment for the 708 square feet of Addition Space. If one were to recalculate the Addition Space at \$20 per square foot (using the assessment-record card valuation for the barn), the Addition Space would add approximately \$15,000. The board, however, thinks that \$15,000 may be excessive for this additional space, but the board did not receive other evidence on this point.

2) The board has recalculated the assessment below. Basically, the board made two adjustments. First, we recalculated the Addition Space as barn space rather than living space. Second, we increased the market adjustment on

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the building, resulting in a .6 factor rather than a .65 factor. This adjustment was due to the large building and barn on a small lot and the Property's location adjacent to the multi-family properties.

Recalculation of Assessment

Step One -- Calculate existing assessment on Addition Space

308 square feet delete	\$10,800
400 square feet delete	<u>\$32,916</u>
	\$43,716

Step Two -- Deduct Addition Space from assessment card category

"Additions"

\$94,800 Additions shown on card
-43,716 Subtract for 708 square feet
\$51,084 Revised Additions

Step Three -- Recalculate building assessment (using adjusted additions and using .60 market adjustment)

\$119,800 Base Price
- 4,400 Basement
5,400 Plumbing
51,084 Additions
8,000 Other Features
\$179,884 Subtotal
x 1.17
\$210,464
x .60 Market Adjustment
\$126,279 True Value

Step Four -- Add barn, Addition Space and land

\$126,279 True Value
21,500 Barn
13,983 (708 square feet @ barn quality)
\$161,762 Buildings
26,600 Land
\$188,362 Total
\$188,400 rounded

Equalized value \$182,900 ($\$188,400 \div 1.03$)

3) The Town went through a revaluation in 1995. However, the Town failed to submit any sales to support the assessment. Since the Town was recently revalued, the Town should have submitted sales for the board's consideration. RSA 75:1 requires that assessments be in line with market value. Therefore, providing sales is essential for the board to compare the

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Property's assessment with fair market value and the general level of assessment in the municipality. See Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986).

If the taxes have been paid, the amount paid on the value in excess of \$185,400 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

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Certification

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

Date: April 3, 1997

Valerie B. Lanigan, Clerk

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