

Robert H. Thomson, Jr. and Bonnie S. Johnson

v.

Town of Windham

Docket No.: 16046-95PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$402,600 (land \$110,200; buildings \$292,400) on a 3.720-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 April 1993 for \$350,000 and prices have remained stable since that time;

- (2) one-quarter to one-third of the Property is covered with water and the pond on the Property is not an asset as it is not spring fed and is shared with the neighboring property;
- (3) the home should be graded B- as it has some functional problems; and
- (4) an April 1995 appraisal estimated the market value to be \$369,000.

Page 2

Thomson and Johnson v. Town of Windham

Docket No.: 16046-95PT

The Town argued the assessment was proper because:

- (1) the Town did a complete market analysis for 1995 and sales were reviewed in a two-year time period prior to April 1995;
- (2) interior and exterior inspections were performed and overall grade, quality and condition of the properties was considered;
- (3) the "Magnolia" neighborhood is one of the more desirable neighborhoods in Town;
- (4) the Taxpayers' appraisal is flawed because it used a bankruptcy sale and a cash/relocation sale as comparables; and
- (5) three comparable sales supports an April 1995 market value of \$395,000.

The board's review appraiser (Mr. Scott Bartlett) inspected the property, reviewed the property-assessment card, reviewed the parties' submissions and filed a report with the board. A copy of the report was supplied to the parties who were given an opportunity to respond. This report concluded the proper assessment should be in a range from \$372,700 to \$399,000. 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 \$383,800 based on an estimated market value of \$380,000. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). However, the existing assessment process allocates the total value between land value and building value. The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.

Page 3

Thomson and Johnson v. Town of Windham

Docket No.: 16046-95PT

The board gives most weight to Mr. Bartlett's report. The board agrees with Mr. Bartlett that the two appraisals submitted by the parties were reasonable and contained logical adjustments. Further, the board finds that Mr. Bartlett's analysis of the comparable at 9 Magnolia Road, which the Taxpayers argued was the most comparable sale, established a similar range of value using the Town's and the Taxpayers' appraiser's adjustments. Consequently, the board concludes that a market value finding of \$380,000, approximately midway between the valuation range, is appropriate.

The board acknowledges some of the physical problems that the Taxpayers noted with the Property. However, based on Mr. Bartlett's inspection and description of the Property, the dwelling is of above average quality notwithstanding some repairs and maintenance needed to be done.

The board gives little weight to the Taxpayers' purchase of the Property in April of 1993 for \$350,000. First, the Property was only on the market for

two months before being purchased. Second, the Taxpayers' most comparable property, 9 Magnolia Road, sold for \$340,000 in August 1994. 9 Magnolia Road was of lesser quality as noted by both appraisers and smaller in size. Consequently, the Property should be valued more than \$10,000 greater than 9 Magnolia Road.

If the taxes have been paid, the amount paid on the value in excess of \$383,800 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

Page 4

Thomson and Johnson v. Town of Windham

Docket No.: 16046-95PT

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

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 Robert H. Thomson, Jr. and Bonnie S. Johnson, Taxpayers; and Chairman, Selectmen of Windham.

Date: September 11, 1997

Valerie B. Lanigan, Clerk

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ORDER

After the hearing in this case, the board had its review appraiser review the file and the Property and his report is included with this order. (Additional addendum to the review appraiser's report, i.e., photos and assessment-record cards, are contained in the board's file.) If the parties have any comment to the report, they shall file those comments within 20 days of the clerk's date below. When the 20 days has run, the board will issue the decision.

The parties are also advised to see if the report can be used to resolve this appeal through settlement.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Valerie B. Lanigan, Clerk

CERTIFICATION

I hereby certify that the foregoing order has been mailed, postage prepaid to Robert H. Thompson, Jr. and Bonnie S. Johnson, Taxpayers; and Chairman, Selectmen of Windham.

Dated: August 5, 1997

Valerie B. Lanigan, Clerk

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