D. Arthur Knowles

v.

Town of Ossipee

Docket No.: 16507-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of $66,000 (land $10,900; buildings $55,100) on a 1.1-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) the front of the Property abuts a restaurant, and its access is through a deeded right-of-way controlled by a gravel pit owner (to the rear);

(2) there are errors on the assessment-record card and the Property suffers from functional depreciation because its only bathroom is off the kitchen;

(3) the second floor access is through an outside stairway;

(4) the Property is located within a commercial zone (with residential zoning to the rear) and should be assessed for its residential use; and

(5) an April 1995 appraisal estimated the value to be $43,000.

The Town argued:

(1) the land was assessed at a commercial price but depreciated 50% because of its residential use and 10% for its access;

(2) the Taxpayer's appraiser used an incorrect gross living area and made significant adjustments to the sales; and

(3) the fact that the second floor and basement could only be accessed from the exterior of the building is not reflected on the assessment-record card and the Town was not aware that there were discrepancies in the measurements.

At the board's request, the Town stated it would reinspect and remeasure the building and submit a revised assessment-record card to the board following the inspection. Based on the inspection, the Town stated measurements were corrected, the number of bathrooms was reduced from 1.5 to 1.0 and the depreciation schedule was revised to reflect the Property's utility deficiencies and the age of the building indicating a revised assessed value of $60,200.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $54,500. The board has reviewed the Town's revised assessment and finds that an increase in functional depreciation to 15% more appropriately reflects the

utility deficiencies of the house. Based on the evidence and the photographs submitted, the upstairs area is in effect just an attic or storage space with access only from the exterior of the building. This certainly detracts from the market value of the home. Added to all of the other deficiencies (outside access to the basement, no ducted heat in one bedroom, dirt floor in basement, etc.), a 15% depreciation is not excessive.

The board has also reviewed the land assessments on the comparable properties submitted. While the board understands that the Property is partially located in a commercial zone and that the Town assessed the land commercially and then discounted it to a residential property value, the board finds that the adjustment was low. This Property is located behind a

restaurant, has access via a right-of-way which the Taxpayer must maintain and has a gravel pit to the rear. The land assessment of $11,000 appears to be similar to the base value set for residential lots. However, some adjustment should be made to the base value to reflect the Property's location and access which detracts from the Property's value. The board finds a condition adjustment of .30 results in a more appropriate land value. The boards calculations follow.

BUILDING

Replacement Cost New		$59,570
Depreciation		27%
Normal	12%	
Functional	15%	
Building Depreciated Value		$43,500
Extra Features		$ 2,700
Total Building		**$46,200**

LAND

# of Units	Type	Unit Price	CD	Factor	Condition	Land Value
1.00	AC	$30,000	D	0.90	0.30	$8,100
0.10	AC	$ 2,000	X	1.00	1.00	$ 200
					Total Land Value	**$8,300**

The board's revised assessment of $54,500, when equalized by the 106% equalization ratio for the Town of Ossipee for the 1995 tax year indicates an approximate market value of $51,400. The Taxpayer submitted an appraisal report which indicated a market value of $43,000. The board has given the report little weight in its final determination of value because: 1) the appraiser used an incorrect gross living area; 2) the appraiser did not give any indication of the dates the comparable sales took place leaving the board to question whether time adjustments were appropriate; and 3) no data was submitted to explain any of the adjustments made.

If the taxes have been paid, the amount paid on the value in excess of $54,500 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[1] under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively

[1] The board notes a shed valued at $1,000 (rounded) should be included in the 1996 assessment.

"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

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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 D. Arthur Knowles, Taxpayer; Alice MacKinnon, Agent for the Town of Ossipee; and Chairman, Selectmen of Ossipee.

Date: May 5, 1997

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Valerie B. Lanigan, Clerk

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