

James and Margaret H. Smith

v.

Town of Windham

Docket No.: 16544-95PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$166,000 (land \$54,900; buildings \$111,100) on a 5.73-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 1991 for \$119,010 plus \$3,000-\$4,000 in back taxes;

- (2) a high voltage power line easement runs through the Property;
- (3) the Property and two other lots (139 and 141 Castle Hill) have substandard frontage and share a long common access;
- (4) the Property has significant inadequacies which detract from its value;

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- (5) an adjoining property (139 Castle Hill) with better grade, condition and layout sold in June 1993 for \$166,000;
 - (6) a comparison of 1994 versus 1995 assessments of comparable properties support disproportionality of the Property;
 - (7) the sales used by the Town all are assessed less than their sales prices;
- and
- (8) the proper assessment should be \$135,490.

The Town argued the assessment was proper because:

- (1) there is no relevant comparison between the 1994 and 1995 records;
- (2) 139 Castle Hill Road sold after a 2-year marketing period in which the property was overpriced and the C quality grades for 139 and 143 Castle Hill Road are minimum building code qualities;
- (3) a 15% depreciation has been made for the negative aspects of the power line easement and long, shared driveway access; and
- (4) three comparable sales support the assessed value.

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. A copy of the report was sent to the parties who were given an opportunity to respond in writing. This report concluded the range of assessed values to be \$143,500 to \$147,000. 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 \$143,500.

In arriving at this abatement, the board finds that many of the issues raised by the Taxpayers would have an affect on the Property's value including the physical problems with the house, the long shared drive and the power line

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easement. The board finds the Town's assessment, while recognizing to some extent these issues, did not sufficiently adjust for them to result in the assessment being proportional to the sales submitted by the parties. Conversely, while the board gave some weight to the physical problems of the Property, we did not find them to have as substantial an affect on the market as the Taxpayers' claimed.

The board places most weight on Mr. Bartlett's value conclusions contained in his report rather than the Town's or the Taxpayers' analyses. Mr. Bartlett viewed the Property with the Taxpayers and viewed the comparables from the exterior. Based on Mr. Bartlett's view and his appraisal knowledge and experience, the board finds his analysis to be the most credible. The Taxpayers responded to Mr. Bartlett's report noting several errors in it such as the notation of the number of fireplaces and the basement finish quality of comparable number 3. The board made revisions to Mr. Bartlett's analysis

which resulted in a correlated indication of market value being slightly less than \$145,500 found by Mr. Bartlett, in fact, more in line with his revised assessment recommendation of \$143,500.

The board was unable to place significant weight on the Taxpayers' case summary (Taxpayers' Ex. #2), or the Taxpayers' analyses contained in their August 21, 1997 response to Mr. Bartlett's report. We find their analyses and commingling of adjustments difficult to follow in a rational manner and their conclusions of questionable market relationship. Further, the Taxpayers' comparison of old assessments to current assessments is without merit as far as proving disproportionality for the 1995 tax year. Assessments must always be based on market value. Consequently, increases from past assessments are not evidence that a taxpayer's property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985). Reassessments are implemented to remedy past inequities and adjustments will vary, both in absolute numbers and in percentages, from property to property.

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If the taxes have been paid, the amount paid on the value in excess of \$143,500 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 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 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

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to James and Margaret H. Smith, Taxpayers; and

Chairman, Selectmen of Windham.

Date: September 22, 1997

Valerie B. Lanigan, Clerk

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