

Lawrence Salisbury

v.

Town of Temple

Docket No.: 16746-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 ad valorem assessment of \$105,650. The "Property" consists of 8.75-acre lot (6.3 acres in current use with an assessment of \$1,925 and 2.45 acres not in current use (NICU)) with a mobile home. 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 home is a 1954 10' X 50' trailer that has a stick built addition

attached to it;

- (2) a February 1997 appraisal estimated the market value to be \$35,000;
 - (3) the Taxpayer recently purchased a neighboring 2.0-acre lot for \$20,000;
- and
- (4) the sheds have little to no value.

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The Town argued the assessment was proper because:

- (1) the Town contracted with AVITAR to inspect the Property and to review the assessment; the assessment was adjusted at that time;
- (2) the Taxpayer's appraiser used sales that were not comparable (#1 was a sale from a bank; #2 sold by a spouse after husband's death; #3 sold to tenants); and
- (3) the minimum buildable lot size in Town is 3.0 acres, the Taxpayer would need to get ZBA approval to build on the 2-acre lot that was recently purchased.

The board's review appraiser inspected the property, reviewed the property-assessment card, reviewed the parties' briefs and filed a report with the board. This report concluded the proper total assessment (buildings and CU and NICU land) should be \$97,300.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$90,200 broken down as follows.

| | |
|------------------|-----------------|
| NICU land | \$36,400 |
| *Buildings | <u>\$28,500</u> |
| Subtotal | \$64,900 |
| Assessment Ratio | <u>x 1.36</u> |
| | \$88,264 |
| CU Land | <u>+ 1,925</u> |

\$90,200 (rounded)

| | |
|-----------------------------|-----------------|
| (*Buildings -- Building A = | \$22,300 |
| Building B = | \$ 5,000 |
| Buildings C, D and Shed | <u>\$ 1,200</u> |
| | \$28,500) |

The best information presented to the board was Mr. Bartlett's report. The board adopts his report with one change. The board concludes the value of Building B should be \$5,000 rather than \$10,296 as stated by Mr. Bartlett. The board concludes Building B should be assessed less than Mr. Bartlett's recommendation because the board, using its own judgment, concludes that Building B would certainly not add \$10,000 in value to this property.

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The board did not adopt the Taxpayer's recommendation for the following reasons.

1) The appraisal's \$35,000 total value was less than Mr. Bartlett's land estimate. Given the value paid for comparables C and D in Mr. Bartlett's report, the board finds the appraiser undervalued the Property.

2) The conclusion that the appraiser undervalued the Property is bolstered by the fact that the Property is a level lot with some views.

3) Additionally, other than the house, the Taxpayer's appraiser did not attribute any value to the other buildings on the Property. While it is true that the other buildings are in various states of repair and disrepair, certainly Building B adds some value to the Property that the appraiser failed to recognize.

4) The Taxpayer's \$20,000 purchase of a 2-acre lot does not show the Property's NICU land was overassessed. Again, we look to the land analysis by Mr. Bartlett. Additionally, the Taxpayer's purchase was from a neighbor and that lot was not marketed in the usual way.

We also note that the Town was last revalued in 1988, and the Town did not present recent sales to support the 1988 base assessment on Property. This is another reason that Mr. Bartlett's report was selected as the best value indicator.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$90,200 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 1997. 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.

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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

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Lawrence Salisbury, Taxpayer; and Chairman, Selectmen of Temple.

Date: September 3, 1998

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Town's" rehearing motion, which is denied. The motion did not demonstrate that the board erred in its decision, and thus, the motion failed to show any "good reason" to grant a rehearing. See RSA 541:3.

To appeal this matter, an appeal must be filed with the supreme court within thirty (30) days of the clerk's date below. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I certify that copies of the within Order have this date been mailed,

postage prepaid, to Lawrence Salisbury, Taxpayer; and Chairman, Selectmen of Temple.

Date: October 27, 1998
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Valerie B. Lanigan, Clerk