

James H. Peavey

v.

Town of Bath

Docket No.: 16933-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$274,450 (land \$17,700; current-use land \$3,450; buildings \$253,300) on a 20.04-acre lot with a single-family home and dairy farm (the Property). The Taxpayer also owns, but did not appeal, another property in the Town with a \$27,400 assessment. 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) he bought the Property in 1996 for \$150,000, which included substantial equipment (estimated at \$50,000);

(2) he sold the Property in October 1998 for \$210,400, which allocated \$155,400 for the Property and \$65,000 for the equipment;

(3) both sales were arm's-length, non-distress sales after the Property had been on the market for a reasonable time;

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(4) the Town was reassessed in 1998, and the Property's new assessment was \$171,000; and

(5) a 1997 appraisal estimated a \$150,000 value.

The Town argued the assessment was proper because:

(1) the assessment was set in 1983 by the department of revenue administration (DRA);

(2) the prior owner never disputed the assessment;

(3) the Taxpayer's abatement document only asserted the Property was bought for \$150,000; the Town considered this reason to be inadequate; and the Taxpayer only later had the appraisal performed and other information gathered; and

(4) the Property's assessment was consistent with other similar properties, especially looking at the per-square-foot assessment for barns, which were calculated using the DRA's assessment manual.

Board's Rulings

Based on the evidence, the board finds the 1996 market value of the Property to be \$170,000. This equates to an ad valorem assessment of \$102,000 by applying the Town's 1996 equalization ratio of .60 ($\$170,000 \times .6$).

However, the board has made a further reduction because the Property has 11.81

acres in current use. Based on the ad valorem assessment-record card submitted by the Town subsequent to the hearing, the ad valorem assessment needs to be reduced by \$7,850 for the reduction in current-use assessment for the 11.81 acres. Consequently, the total assessed value including current-use consideration is \$94,150.

The board finds substantial evidence was submitted by the Taxpayer to warrant an abatement. First, the Taxpayer's purchase and subsequent resale of the Property (both appearing to be arm's-length transactions based on the testimony) support a lower assessment. Further, the 1997 appraisal estimated a market value of \$150,000 based on several sales of purchased-feed dairy operations. Notwithstanding some of the comments presented by the Town as to

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perhaps necessary adjustments for differing quality and size of buildings, the board finds this appraisal also generally supports an abatement. Lastly, the Town underwent a revaluation in 1998 which resulted in an assessment of \$171,019 (inclusive of current-use assessment). While no details were submitted to support this 1998 assessment, the Town's general testimony was that the reassessment significantly reduced the tax burden for most dairy operations based on recent comparable sales.

The board understands the Town's desire to have retained the 1983 valuation basis until the next revaluation. However, the market value of \$457,417 as indicated by equalizing the current assessment ($\$274,450 \div .60 = \$457,417$) shows how untenable that position is. RSA 75:1 requires municipalities to assess property relative to market value. Further, RSA 75:8 requires municipalities to annually review the assessments and to "reappraise

all such real estate as has changed in value in the year next preceding...."

The board finds that adequate evidence was available for the Town given the initial sale of the Property and other sales of similar properties in the region to warrant a revision of the Property's value. To not abate the Property in light of such market evidence results in the Property being significantly overassessed and bearing a disproportionate share of the common tax burden.

The board finds the market value of the Property would likely have been higher than the \$150,000 estimate arrived at in the Taxpayer's appraisal. The Taxpayer testified that, in both his initial 1996 purchase of the Property and the subsequent 1997 resale of the Property, high taxes were a factor chilling the sales price. If taxes had been more proportionate based on the Property's true market value, it is likely that the actual sales price would have been slightly higher. Further, the board gives some weight to the Town's argument that some of the differences between the Taxpayer's comparables (e.g., quality of residence, size of buildings, size of lot, etc.) may not have been fully

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accounted for. Thus, the board has estimated an additional \$20,000 in market value above the estimated \$150,000 appraisal value.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$94,150 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 and 1998. 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.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard A. Cawley, Esq., Counsel for James H. Peavey, Taxpayer; and Chairman, Selectmen of Bath.

Date: December 15, 1998

Valerie B. Lanigan, Clerk

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