

George Brewster

v.

City of Portsmouth

Docket No.: 17296-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1996 assessment of \$113,400 on a .42-acre lot with a single-family home (the Property). For the reasons stated below, the appeal for abatement is granted to the City's revised \$91,860 assessment.

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 and submitted a summary statement marked as Taxpayer Exhibit 5. Reference should be made to this exhibit for the Taxpayer's arguments.

The City presented a revised assessment and argued the revised assessment was correct because:

(1) the Property had some updating done to the electrical, heating and hot water systems;

(2) land values in the City's south end were increasing at double digit rates during the year under appeal; and

Page 2
Brewster v. City of Portsmouth
Docket No.: 17296-96PT

(3) there are a limited number of properties in the south end similar to the Property, i.e., older, unrenovated, single-family dwellings, and there is an unlimited number of potential purchasers for this type of property.

Board's Rulings

The board grants the Taxpayer's appeal, reducing the assessment to the \$91,860 assessment recommended by the City.

The Taxpayer raised valid concerns about the original \$113,400 assessment, especially given the Property's poor condition as shown by the photographs (interior and exterior). The original assessment had been calculated without an interior inspection, and by board order, an interior inspection was conducted before the hearing. Based on this interior inspection and an overall review of the assessment, the City recommended an assessment reduction. The revised assessment was the best value information presented to the board. The revised assessment results in an equalized value of \$100,950, which, given the evidence, is a reasonable market value for the Property.

The City explained that in 1996, there was a hot market for properties in the south end, especially properties that were in disrepair and could be purchased and then renovated. The Taxpayer's Property certainly fits into

this category. Additionally, the City testified that in 1996 and 1997, there were no sales in the south end below \$100,000. While the Property certainly has certain deficits, the Property enjoys a good location with good potential for renovation. Moreover, the house on the Property was constructed in 1780, which given the Property's location in the south end of Portsmouth, certainly enhances the Property's value and potential.

The Taxpayer presented four comparables, but the comparables did not demonstrate that the \$100,950 equalized value was excessive. The Taxpayer did not provide photographs of the comparables that were representative of the comparables' conditions on the sale dates. Photographs are essential information because the Taxpayer argued that the properties were comparable

Page 3
Brewster v. City of Portsmouth
Docket No.: 17296-96PT

on the sale dates. The board could not judge for itself whether the Taxpayer's statement was true because we did not receive photographs to review. Additionally, the Taxpayer did not provide a grid that analyzed the comparables in relation to the Property. Such a grid would have listed various factors that influence value such as size and condition with adjustments for differences in those factors. Finally, the Taxpayer did not time adjust the 1994 and 1995 sales. The City argued that a time adjustment was warranted because the market was rapidly increasing in the south end. While the Taxpayer raised some good questions about the City's paired sales analysis, the City adequately answered the Taxpayer's questions.

The parties agreed that the sale at 11 Howard Street, which sold for \$82,500 in August 1994, was the best comparable to the Property. Based on the City's time trending analysis, that sale would have to be increased by 18.3%

to bring the 1994 value to the April 1, 1996 assessment date (.83% per month for four months -- 8/94 - 12/94; .83% per month for twelve months -- 1/95 - 12/95; and 1.2% per month for four months -- 1/96 - 4/96.). This time adjustment would increase the sale price to \$97,600, which is approximately the Property's equalized assessment. Of course, this is only time trending that sale, and as explained above, other factors should have been analyzed.

In conclusion, the City's revised assessment appears reasonable, and the Taxpayer failed to show that the revised assessment resulted in him paying a disproportionate share of taxes.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$91,860 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 City has undergone a general reassessment, the City shall also refund any overpayment for 1997. Until the City undergoes a general reassessment, the City shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8.

RSA 76:17-c I.

Page 4

Brewster v. City of Portsmouth

Docket No.: 17296-96PT

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

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to George Brewster, Taxpayer; and Chairman, Board of Assessors, City of Portsmouth.

Date: July 31, 1998

Valerie B. Lanigan, Clerk

0006

George Brewster

v.

City of Portsmouth

Docket No.: 17296-96PT

ORDER

This order responds to the "Taxpayer'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.

The board does, however, correct the lot size on page one. The lot size is .042 according to the assessment card. This was a typographical error that did not effect the board's decision. See TAX 201.37 (no rehearing for harmless error).

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

Douglas S. Ricard, Member

Page 2
Brewster v. City of Portsmouth
Docket No.: 17296-96PT

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to George Brewster, Taxpayer; and Chairman, Board of Assessors, City of Portsmouth.

Date: September 11, 1998

Valerie B. Lanigan, Clerk

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George Brewster

v.

City of Portsmouth

Docket No.: 17296-96PT

ORDER

This order relates to the "Taxpayer's" June 5, 1998 letter and confirms those matters discussed during the board's June 23, 1998 telephone conference with the parties.

1) The Taxpayer has the responsibility for preparing his own case even though he lives out of state. The "City" should comply with the Taxpayer's reasonable requests, but the City is not responsible for preparing the Taxpayer's case.

2) The City shall, within ten days of the clerk's date below, provide the Taxpayer with the following:

- a) the assessment-record cards for 11 Howard Street, 65 Wentworth Street, 196 South Street and 38 Pickering Street (the Requested Comparables);
- b) reduced copies of the tax maps showing the locations of the Requested Comparables; and

c) copies of the sales summary sheets for 1996, 1997 and 1998.

3) Before the hearing, the Taxpayer shall arrange with the City for an inspection of the appealed property. The board reminded the Taxpayer that he has the burden of proof and failure to arrange an inspection could effect the Taxpayer's ability to carry the burden of proof. Further, RSA 74:17 (copy attached) enables municipalities to request an inspection, and the statute

Page 2

Brewster v. City of Portsmouth

Docket No.: 17296-96PT

authorizes the board to dismiss an appeal if a taxpayer refuses the inspection. The board considers the City's request as a request under RSA 74:17. Thus, the Taxpayer's failure to arrange an inspection could result in dismissal of the appeal. Such a dismissal would mean the Taxpayer would not even present a case.

In conclusion, the board hopes the parties will find reasonable ways to prepare this case for hearing. The board specifically cautions the Taxpayer to tone down the inflammatory rhetoric in his communications with the City and the board. For example, the Taxpayer's June 5, 1998 letter includes inflammatory words such as "seriously obstructs justice," "unreasonable denial," and "outraged." Such language does not advance the reasonable resolution of this appeal. As the board often states, "Parties can disagree without being disagreeable."

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to George Brewster, Taxpayer; and Chairman, Board of Assessors, City of Portsmouth.

Date: June 26, 1998

Valerie B. Lanigan, Clerk

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