

Thomas W. Early

v.

Town of Loudon

Docket No.: 17391-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of \$144,600 (land \$24,700; buildings \$119,900) on a one-story home on a 4.87-acre lot (the "Property"). The Taxpayer also owns, but did not appeal, a 21.82-acre lot in current use. 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 house was built in 1995 for approximately what it was assessed for in the 1996;
- (2) the noise and traffic associated with the New Hampshire International Speedway detracts from the value of the Property; and
- (3) the market value of the Property was approximately \$125,000 on April 1, 1997.

The Town argued the revised assessment was proper because:

- (1) a grid comparing three comparable sales to the Property supports the assessment;
- (2) the Taxpayer's report on the affect of the Property's location near the racetrack was incomplete and inconclusive; and
- (3) the Property's assessment has been adjusted once but should be revised again to reflect the lack of a fireplace.

The board's review appraiser, Mr. Scott Bartlett, inspected the Property (exterior only), reviewed the assessment-record card, reviewed the parties' briefs and filed a report with the board. 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 \$125,450 based on a market value finding of \$128,000 adjusted by the Town's 1997 equalization rate of 98% ($\$128,000 \times .98$). The market value estimate of \$128,000 is based on Mr. Bartlett's report, which the board finds is the best evidence of the Property's market value.

The primary focus of this appeal is whether the noise associated with the New Hampshire International Speedway (NHIS) materially affects the Property's market value. The Taxpayer's

Property is approximately three-quarters of a mile east of NHIS. While prepared subsequent to the 1997 tax year, Taxpayer Exhibit 3 (a portion of a 1998 noise study performed for NHIS and submitted to the Town of Loudon) quantified the maximum track noise levels at the Property in the 80 to 95 decibel level depending on various atmospheric and wind conditions. No evidence was submitted that the track noise in 1997 was any different than quantified in the 1998 report. This level of noise and the plain fact that NHIS is the largest racetrack in New Hampshire or New England certainly raises the potential for NHIS being a significant factor to be considered in determining the Property's market value. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) (In arriving at an equitable assessment, municipalities must look at all relevant factors.) Consequently, the Taxpayer's evidence raised a significant question whether the Town had adequately considered the NHIS noise.

At hearing, the Town testified sales analyzed during the 1997 reassessment indicated no market value affect of property within close proximity to the track. However, no such sales or analysis were submitted. Further, the sales that were submitted by the Town in support of the assessment, with the exception of the 5 McKenzie Road sale, are of such a distance from NHIS as to not be affected by its noise. Also, in the Town's response to Mr. Bartlett's report, the Town's representative referenced a thesis study's comprehensive analysis of the impact of airport noise on adjacent property values. However, no specific information was submitted about that report for the board to determine whether it was in any way germane to the case at hand.

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In keeping with the court's ruling in Appeal of Sokolow, 137 N.H. 642 (1993), where the taxpayer has submitted some credible evidence of a factor affecting a property's market value, the board requested its review appraiser to review the file and submit a report. Mr. Bartlett

estimated the Property's market value by both the cost and the sales approach. Both approaches compared sales of properties in similar proximity to NHIS and those further away in an attempt to measure any impact of the noise of the track. While certainly Mr. Bartlett's report is not an exhaustive analysis of all sales in the past several years in proximity to the track, the board finds the paired sales do provide a reasonable indication of the track's noise impact on residential property, especially those easterly of NHIS in line with the generally prevailing westerly winds.

After receiving comments on Mr. Bartlett's report, the board viewed the Property and the comparables contained in Mr Bartlett's report on a day when racing trials were being conducted at NHIS. While certainly the noise levels will vary depending on the type of vehicles being raced and weather conditions, the board's observations during the view generally coincide with Mr. Bartlett's description of the noise levels of the subject and the comparables.

The Town, in responding to Mr. Bartlett's report, pointed a parcel of 20 acres across Lower Ridge Road from NHIS (Map 51, lot 12) which sold for \$75,000 in December 1998. The Town argued an analysis of the sale of this property, after adjustment for developer's profit and building site improvements, indicates a higher per-acre value than found by Mr. Bartlett. While this is true, when compared on a site basis rather than acre basis, the sale indicates an improved lot value just over \$17,000 which supports Mr. Bartlett's site value of \$20,000 for the Property's larger house site of 4.87 acres.

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Based on Mr. Bartlett's report, the board's personal observations and its experience and knowledge¹, the board finds the noise associated with NHIS would be a factor in marketing the

¹The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33 VI; Appeal of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

Property and would likely either reduce the value and/or limit the potential marketing pool. Because Mr. Bartlett's report is the best evidence quantifying the affect on market value, the board finds the 1997 market value to be \$128,000, resulting in an assessment of \$125,450.

If the taxes have been paid, the amount paid on the value in excess of \$125,450 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 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

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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

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Richard W. Early, Representative for Thomas W. Early, Taxpayer; and Chairman, Board of Selectmen of Loudon.

Date: September 1, 1999

Lynn M. Wheeler, Clerk

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ORDER

The board is in receipt of the “Town’s” September 30, 1999 letter, which the board treats as a motion for rehearing.

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.

The Town’s issue of the quality of the dwelling was generally testified to at the hearing and addressed in Mr. Bartlett’s replacement cost estimate which was submitted to the parties with an opportunity for them to comment. The Town could have, either at the hearing or in response to Mr. Bartlett’s report, responded more definitively as to the quality of the home.

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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Richard W. Early, Representative for Thomas W. Early, Taxpayer; and Chairman, Board of Selectmen of Loudon.

Date: October 11, 1999

Lynn M. Wheeler, Clerk

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