

Michael G. and Karen M. Cerato

v.

Town of Hollis

Docket No.: 17402-97PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of \$431,800 (land \$143,800; buildings \$288,000) on a 6.97-acre lot with 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 for the following reasons:

- (1) the Property was acquired in May, 1996, for the sale price of \$352,500;
- (2) the appraisal commissioned by the Taxpayers indicated a market value of \$360,000;
- (3) the improvements made to the Property did not increase the Property's value by \$80,000.00 as the Town's assessor suggests;

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(4) since the assessed values of properties in Hollis are at 100%, then the assessed value on the Property should be reduced to reflect the actual market value; and

(5) the physical dimensions of the Property are less than the 3752 square feet listed by the Town.

The Taxpayers claim the actual square footage is 3537.

The Town argued the assessment was proper for the following reasons:

(1) the building has been improved since the Taxpayers' purchase and is in good condition;

(2) the land assessment compares favorably to other similar lots in Town;

(3) the building assessment compares favorably to other similar buildings in Town;

(4) the Taxpayers' appraisal did not use adequate comparables and is inconsistent; and

(5) the land has subdivision potential.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$409,700 (land \$143,800; building \$265,900). This is based on a finding that the square footage of the dwelling was actually less than the square footage shown on the Town's assessment-record card. The evidence presented, including testimony and pictures of the Property, indicated that the Town had assessed a portion of the dwelling as two stories when that portion should be assessed as a one story. The dwelling is a custom-built colonial with different square footage dimensions between the first and second floors.

The Town acknowledged this fact at the hearing and agreed to recalculate the building assessment based on the reduced square footage. The revised assessment-record card filed with the board shows the square footage area reduced to 3,492 with a revised assessment for the colonial home and attached garage of \$265,900. The calculations received from the Town are as

follows:

Building Computations

Two stories @ 1,616 square feet x \$104.90 = \$169,518.00

One story @ 260 square feet x \$59.95 = 15,587.00

Fireplaces, Jacuzzi, Plumbing, Porches
and Other Adjustments 12,499.00

Replacement Value \$197,604.00

Less physical depreciation of 5% = \$187,723.00

Attached garage 9,215.00

Total Building Value \$196,938.00

Local Multiplier x 1.35

Building Assessment (Town computation) \$265,900.00

The board did not find the Taxpayers' arguments relative to the land assessment persuasive. First, the \$80,000 lot value contained in the Taxpayers' appraisal is not substantiated with any market data and, in fact, substantially understates the lot value based on the sales submitted by the Town. The Town submitted several sales of two(2)-to-three(3)-acre lots that sold in a range of \$130,000 to \$150,000 and two larger lots (approximately five to seven acres in size) that sold for \$157,000 and \$189,000 respectively. These were all unimproved land sales (i.e., without any site work, driveway, utilities, etc.). These sales support the Town's assessment of the Taxpayers' improved 6.987-acre lot at \$143,800.

The board further finds the Taxpayers' argument that the Town's land assessment methodology improperly considers the lot as subdividable to be without merit. Without ruling on either the legal or economic potential for subdivision, the board finds the Town's size and undeveloped adjustments to the four front acre home site properly recognizes it as one primary building site with supplemental acreage. Even if the house site was reduced to two acres, the

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rear acreage increased by two acres and the size and undeveloped factors associated with the 2-acre secondary site removed, the resulting assessment would be comparable.

The board did not place any weight on the Taxpayers' appraisal because it was an exterior appraisal with several inconsistencies. Further, the board did not place any weight on the sales price the Taxpayers paid for the Property in April 1996 because the prior owner had pressure to sell and relocate.

Accordingly, when the land value of \$143,800 is added to the building value of \$265,900 the revised total assessment for the Property is \$409,700.

If the taxes have been paid, the amount paid on the value in excess of \$409,700 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

Steven H. Slovenski, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Michael G. and Karen M. Cerato, Taxpayers; Karen Marchant, Assessor for the Town of Hollis; and Chairman, Selectmen of Hollis.

Date: December 1, 1999

Lynn M. Wheeler, Clerk

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