

Brian D. and Lynn M. Lamy

v.

Town of Bedford

Docket No.: 17439-97PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of \$246,800 (land \$46,100; buildings \$200,700) on a two-story Colonial style home on a 1.04-acre lot (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 Taxpayer 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 because:

- (1) the assessment-record card incorrectly describes the land and building;
- (2) the lot was the last lot in the subdivision to be purchased because it is

low, the land has hydric soils and as a result the house is limited to a three bedroom;

(3) the Town's assessment on the building is 122% of the \$164,392 cost to construct;

(4) a review of comparable properties shows the overassessment of the Property; and

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(5) the Property's April 1997 value was \$195,000.

The Town argued the assessment was proper because:

(1) the Town revisited the Property, adjusted the acreage and adjusted for the lot's inadequacies and reduced the assessment;

(2) an attic value was added because the Property has stairway access;

(3) an assessment comparison of the Taxpayers' comparable sales shows the Property's per-square-foot assessment to be on the low end of the comparables which supports the assessment;

(4) a June 1997 lot sale for \$50,000 shows what lots are selling for in the neighborhood and the land assessment is reduced for its topography;

(5) the Taxpayers' 72 Buttonwood sale is not comparable because it was an FDIC sale, was unbuildable and required a lot of fill; and

(6) a \$233,000 (minus \$2,000 for air conditioning) appraisal performed by CFX Bank for mortgage lending purposes supports the assessment.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$234,500. This assessment is arrived at by reducing the appealed assessment by 5% for several reasons.

The board finds the Taxpayers' construction costs and the photographs of

the dwelling support a lower building assessment than that arrived at by the Town. The board also compared the Property with the three comparables employed in the lending institution's pre-construction appraisal and find the Property is of a slightly lesser quality and curb appeal than those used in the appraisal. Further, the board finds the Town's assessment overstates the contributory value of the attic. Also, the board agrees with the Taxpayers that the market is likely to recognize the limitation to a three-bedroom house due to the septic design and wet soils. Lastly, the board also recognized the lot has negligible landscaping. Given the overall quality of the houses in the neighborhood, the board finds landscaping is a factor the market would recognize. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) (in

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determining proportionate assessments, municipalities must look at all relevant factors).

The board finds no further abatement is justified because the Town's adjustment on the lot already recognized the wet soils and the adjoining lot's septic easement. The board gives no weight to the lot sale for \$28,000 submitted by the Taxpayers because it was a sale from the FDIC and required significant fill before construction could begin. The board also noted the sale at 14 Wildwood Drive submitted by the Town where a lot prior to construction and some fill sold for \$50,000 in 1997. Consequently, the board concludes the revised land assessment (\$43,800) adequately recognizes the deficiencies of this lot as developed. Further, after the building assessment is reduced by 5% and equalized by the Town's 1997 ratio of 110%, the board finds the resulting value is more consistent with its construction costs than the original assessment.

Most importantly, the board finds the overall assessed value of \$234,500 when equalized results in a market value of approximately \$213,000 which is reasonable compared to the various sales comparables submitted.

If the taxes have been paid for the tax year 1997, the amount paid on the value in excess of \$234,500 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

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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

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Brian D. and Lynn M. Lamy, Taxpayers; and Chairman, Board of Selectmen of Bedford.

Date: March 22, 1999

Valerie B. Lanigan, Clerk

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