

John A. and Helen E. Millican

v.

Town of Hopkinton

Docket No.: 17440-97PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1997 adjusted assessment of \$328,450 (land \$147,300; buildings \$181,150) on a 2.7-acre lot with a 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 because:

(1) the Property was listed for sale through three separate brokers beginning in January 1995 (asking price \$349,000), reduced (based on an October 1996

appraised value of \$290,000) to \$285,000 through early 1998;

(2) the configuration of the rooms was an impediment to the sale; therefore, capital improvements were necessary which cost \$17,000 to accomplish;

(3) subsequent to the improvements, a January 1999 offer to purchase for \$285,000 was accepted; and

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(4) prior to the capital improvements, the market value of the Property was \$265,000.

The Town argued the assessment was proper because:

(1) the equalized assessment indicates a market value of \$290,000 which is supported by the Taxpayers' appraisal;

(2) the house was graded a lower grade than it should have been, however despite that, an additional 5% depreciation was given to recognize the bedroom layout; and

(3) three comparable sales support the assessment.

#### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$305,950 (land, \$140,450; buildings, \$165,500). This assessment results from 5% topography adjustment to the house site for the lack of any significant year round views and 10% additional functional depreciation for the small bedroom and bath layout.

The board finds the lengthy marketing efforts of the Property and the necessity to renovate the two small bedrooms and bath into a master bedroom suite supports the Taxpayers' argument for additional functional depreciation due to the poor layout. While the board gives some weight to the Taxpayers'

cost to cure (\$17,000 plus labor), the board's adjustment does not equate to that amount because the market is not necessarily that precise. The board recognizes the Town's argument that the Property was not marketed at a price lower than \$285,000 and consequently it is difficult to determine whether a prospective purchaser could have been found if listed in the \$265,000 to \$275,000 range.

During its deliberations, the board reviewed the photographs of the Property and the comparables submitted by the Town and determined that the Town's topography adjustment of 100% (which was circled and noted for views) should be reduced 5% because the Property's view is seasonal through trees on an adjoining property.

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The board's revised assessment of \$305,950 equates to a market value of \$270,750 ( $\$305,950 \div 1.13$ ). We find this to be a reasonable estimate of market value for the Property prior to the master bedroom renovations. As mentioned from the bench during the hearing, the Town should review the assessment following the renovations for 1999 and make whatever good-faith adjustments it deems appropriate in keeping with the board's decision. RSA 76:17-c and TAX 203.05.

If the taxes have been paid for the tax year 1997, the amount paid on the value in excess of \$305,950 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.

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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to R. Peter Shapiro, Esq., Counsel for John A. and Helen E. Millican, Taxpayers; and Chairman, Selectmen of Hopkinton.

Date: March 11, 1999

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Valerie B. Lanigan, Clerk

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