

William Brunkhorst

v.

Town of Hopkinton

Docket No.: 17541-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of \$200,450 (land \$144,650; buildings \$55,800) on a 1.8-acre lot with a dwelling, cottage and shed (the "Property"). 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 Property was purchased for \$130,000 in March 1997 from a buyer who had purchased the Property from an estate in January 1996 for \$100,000;

(2) the Property has a very spectacular view which is the bulk of its value; the dwellings are of little value (the cottage and shed are in fact a liability);

(3) two bank appraisals were prepared: December 1996 for \$131,000 and January 1998 for \$130,000;

Page 2
Brunkhorst v. Town of Hopkinton
Docket No.: 17541-97PT

(4) 77 Gould Hill Road is the most comparable sale to the Property and the view of 95 Woodwell is equally as good as the Property; and

(5) a fair assessment would be \$150,000.

The Town argued the assessment was proper because:

(1) the seller made view easements on the Property and gave the Taxpayer view easements over the abutting property;

(2) the abutting property sold in December 1997 for \$400,000;

(3) other comparables support the high values paid for the spectacular views;

(4) 77 Gould Hill Road does not have the same view as the subject; and

(5) the buildings on the Property detract from its value; its value is in the land.

Board's Rulings

Based on the evidence, the board finds the assessment to be \$171,950 (land, \$116,150; buildings, \$55,800). This assessment results from two adjustments to the land: 10% reduction in topography adjustment and reduction in the market adjustment for views from 2.00 to 1.75. This revised assessment equates to a market value estimate of \$152,200 (rounded) ($\$171,950 \div 1.13$).

Three indications of market value were presented: the sale of the Property in March 1997 for \$130,000 and two appraisals at \$130,000 and

\$131,000. The board gives little weight to the appraisals as it is clear from the appraisers' comments, they were aware of the purchase and sale price of the Property. Further, based on the Town's testimony and the photographs submitted, the view of the Property is significantly superior to those of the Taxpayer's comparables which the appraisers did not adequately recognize. The board gives some weight to the sale price of \$130,000. However, the board does find that the Taxpayer's purchase was below market value based on the comparables submitted by the Town and the testimony surrounding the details of the transactions of the Property and the adjoining property (e.g. initial purchase by an abutter from an estate, resale after unsuccessful annexation attempt but reciprocal granting of view easements). It was evident from the

Page 3

Brunkhorst v. Town of Hopkinton
Docket No.: 17541-97PT

Taxpayer's testimony that the purchase was generally thought of as a good deal; however, it was also clear that the low quality of the improvements likely had a negative impact on the sale price. It is likely any long term owner of the Property would raze the existing improvements and build a much more substantial residence in keeping with those in the neighborhood. To recognize this fact, the board has adjusted the view factor from 2.00 to 1.75 (approximately \$10,000 to \$11,000 difference) to recognize the cost of demolishing the existing buildings to make the site vacant and ready for construction.

Further, the Taxpayer testified and the photographs support his contention that the size and topography of his lot limits the flexibility of any building location. The comparables submitted by the Town were generally of larger size allowing for greater flexibility in siting a dwelling.

Consequently, the board has reduced the topography adjustment 10%.

The indicated market value of approximately \$152,200, while certainly higher than the purchase price, is a reasonable estimate of the Property's value considering its excellent view encumbered with the existing underimprovements.

If the taxes have been paid for the tax year 1997, the amount paid on the value in excess of \$171,950 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. 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

Page 4

Brunkhorst v. Town of Hopkinton

Docket No.: 17541-97PT

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

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 William Brunkhorst, Taxpayer; and Chairman, Selectmen of Hopkinton.

Date: March 11, 1999

Valerie B. Lanigan, Clerk

0006