

Dale and Nicole Merrill

v.

Town of Thornton

Docket No.: 17628-97PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1997 adjusted assessment of \$102,700 (land \$20,100; buildings \$82,600) on a 1.12-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) they purchased the Property in an arm's-length transaction for \$82,000 in October, 1996;

(2) the Property had originally been listed for \$99,000 and then reduced to \$95,000 and further to \$87,000 before another party eventually signed a purchase and sale agreement for \$83,500; this agreement was never fulfilled and the Taxpayers negotiated the sale of the Property for \$82,000 after it went back on the market; and

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(3) an appraisal of the Property done in connection with the Taxpayers' request for financing from a lending institution estimated a market value of \$84,000 in October, 1996 and there was no appreciation or depreciation of property values in the town during the period from the date of the appraisal to the date of the sale.

The Town argued the revised assessment was proper because:

- (1) there were sales of other similar properties in the town that indicated the sale of the Property was at a below market value price; and
- (2) the revised assessment is accurate and consistent with the methodology used throughout the town.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$88,900 (land \$20,100; buildings \$68,800).

The board gives significant, but not exclusive, weight to the Taxpayers' purchase of the Property for \$82,000 in October 1996. While certainly where it can be demonstrated that a sale was an arm's-length market transaction, as it was in this case, the sales price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). However, the board was also provided evidence of four other sales of similar

properties that indicate the Taxpayers' purchase was at the low end of the market value range¹. The board analyzed the four comparable sales and the Taxpayers' sale on a price-per-square-foot basis summarized below.

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Map/Lot	Current Owner	Square Footage	Sale Price	Price Per Square Foot
60010-0009-0044	Mancini	1,638	\$109,000	\$66.55
0015-0004-0053	Rogers	1,652	\$103,900	\$62.89
0012-0004-0001	Brownstein	1,360	\$85,000	\$62.50
0015-0001-0045	Crisp	1,040	\$85,000	\$81.73
0016-0006-0025	Merrill	1,666	\$82,000	\$49.22

As it is clear from this array of sales, the Taxpayers' price per square foot is significantly lower than the other sales. The board gives little weight to comparable #4 because it is a ranch style home rather than a cape or a one and three-quarter story such as the Property. Nonetheless, the other sales do clearly indicate a general market range higher than paid by the

¹ The focus of our inquiry is proportionality, requiring a review of the assessment to determine whether the property is assessed at a higher level than the level generally prevailing. Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985); Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982). There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the Municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

Taxpayers. The board was unable to perform such an analysis on the three comparables contained in the Taxpayers' appraisal due to lack of the assessment record cards for the comparables.

Additionally, the board reviewed the assessment-record cards and the photographs submitted of the Property and the Town's comparables. While not having photographs of the comparables, the board believes the Property was graded higher than its actual quality of construction. Consequently, the board has reduced the grade to an average minus and incorporated the corrections the Town testified to relative to the entry storage area. The resulting value per square foot of \$53.36 ($\$88,900 \div 1,666 \text{ sq. ft.}$) is still lower than the other comparables in keeping with the board's finding of lower quality construction but also is more proportional to the other sales.

The Taxpayers submitted a request for costs for the preparation and attendance at the hearing. The board denies the request. The board is authorized to award costs as in the superior court. RSA 71-B:9; RSA 76:17-b; TAX 201.39. Generally costs are awarded where an appeal was frivolously filed or maintained. In this case we find the Town had a reasonable basis for not

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granting the abatement to the Taxpayers' sale price, and thus, we find the appeal was not frivolously maintained.

If the taxes have been paid for the tax year 1997, the amount paid on the value in excess of \$88,900 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 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.

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 Dale and Nicole Merrill, Taxpayers; Philip Bodwell of the Department of Revenue Administration, Agent for the Town of Thornton; and Chairman, Selectmen of Thornton.

Date: March 19, 1999

Valerie B. Lanigan, Clerk

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