

Michael and Phyllis L. Gopoiian

v.

Town of Kensington

Docket No.: 17781-98PT

DECISION

The "Taxpayers" filed an appeal, pursuant to RSA 76:16-a, of the "Town's" 1998 assessment of \$331,500 (land \$68,300; buildings \$263,200) on a single-family home on a 1.4-acre lot (the "Property"). The board scheduled a hearing on May 18, 2000, but, before the hearing convened, the Town submitted a written settlement agreement (the "Settlement Agreement"; copy attached to this order). Although this document was modified and then signed by both parties on May 18, 2000, they later disagreed as to the finality of the Settlement Agreement and its applicability to subsequent tax years.

To help resolve this disagreement, the Taxpayers filed a letter with the board on June 9, 2000, complaining of the Town's attempt to retract or reformulate the Settlement Agreement and seeking the Board's assistance. The board's order of June 22, 2000 treated the Taxpayers' complaint and request for assistance as a motion for enforcement under TAX 203.05(j); the board scheduled a hearing on this issue for August 7, 2000, which was attended by both parties.

Based on the evidence submitted at that hearing, and on examination of the terms of the Settlement Agreement, the board grants the Taxpayers' motion for enforcement and orders the Property be taxed based upon the "assessed valuation of \$313,100." This agreed-upon valuation applies both to the April 1, 1998 assessment date and to future years, until such time as an authorized basis exists for changing the valuation, as further described below.

The Settlement Agreement

The Settlement Agreement was submitted and signed by Howard Promer, the Town's "Assessing consultant," and faxed to the Taxpayers at the board's office just before the hearing on May 18, 2000. Taxpayer Michael Gopoian testified that he reviewed the drafted Settlement Agreement, discussed its terms on the telephone with the Town's representative, Office Manager Harriette H. Willoughby, and added a modification before both Taxpayers signed and sent the Agreement back to the Town via fax.

Ms. Willoughby then signed the document "for [the] Selectmen," stating the Settlement Agreement was "acceptable to [the] Town of Kensington," and faxed the letter back to the Taxpayers on the same date. Because of this settlement, the scheduled hearing on May 18th was canceled.

The modification added by the Taxpayers stated they were signing "under the conditional acceptance that this settlement applies to 1998, 1999 and subsequent years."¹ According to testimony at the enforcement hearing, this provision was added because the Taxpayers were

¹The modification goes on to state: "The [T]axpayer[s] also would need the opportunity to review the Index factor of 1.03 for input accuracy and the square footage of the building with the assessor." Taxpayer Michael Gopoian testified that these items were discussed in a meeting with Mr. Promer at the Town's office on June 7, 2000.

concerned the Town might increase the assessed value of the Property in future years since the home they constructed on the Property was not completed until May, 1998, one month after the April 1 assessment date.

The Town's witness, Howard Promer, testified the Town did not realize this possibility until sometime thereafter. On June 7, 2000, the Town wrote to the Taxpayers, stating the Town's intent to increase the assessed value on "[t]he next tax bill" because of the "unfinished construction as of April first of [1988]."

Faced with an increase of five percent in the Property's assessed value, the Taxpayers sought the board's assistance by letter dated June 14, 2000, a letter the board has treated as a motion to enforce the terms of the Settlement Agreement.

The Board's Ruling

The board grants the motion for enforcement and finds the Town is bound by the Agreement to set the assessed value of the Property at \$313,100, as agreed in the Settlement Agreement. This value applies to subsequent years unless and until, of course, the Town in good faith reappraises the property due to "changes in value, or until there is a general reassessment" in the Town. Cf. RSA 76:17-c, I and TAX 203.05(c)(1), (2) and (3), (j) and (k).

The agreed-upon assessed value of \$313,100 was clearly stated in the Settlement Agreement to be based on "the contractor's submission of land acquisition and building construction costs in 1997" (\$322,500), time trended to April 1, 1998 (\$329,600), adjusted by the Town's equalization ratio (95%). Since the Town, in its own words, 'relied' upon these numbers in entering the Settlement Agreement and the numbers reflect complete rather than partial (95%) build-out, the Town's argument that it is free to increase the assessment in 1999 (simply because of completion of the remaining 5%) is

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without merit.

If the taxes have been paid for 1998, the amount paid on the value in excess of \$313,100 shall be refunded with interest at six percent per annum from date paid to the refund date. RSA 76:17-a. Pursuant to RSA 76:17-c, II and TAX 203.05(f), unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1999.

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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

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I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Michael and Phyllis L. Gopoian, Taxpayers; and Chairman, Board of Selectmen of Kensington.

Date: September 5, 2000

Lynn M. Wheeler, Clerk

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ORDER

This order responds to the "Town's" reconsideration motion of the board's September 5, 2000 order, which is denied. The motion did not demonstrate that the board erred in its ruling, and thus the motion failed to show any "good reason" to grant reconsideration. See RSA 541:3.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

Certification

I certify that copies of the within Order have this date been mailed, postage prepaid, to Michael and Phyllis L. Gopoian, Taxpayers; and Chairman, Selectmen of Kensington

Date: October 2, 2000

Lynn M. Wheeler, Clerk

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