

Charles and Diane Interbartolo

v.

Town of Piermont

Docket No.: 17834-98PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$69,700 (land \$20,300; buildings \$49,400) on a single-family home on a 1.2-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 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 building is of a lower quality than assessed by the Town;
- (2) the building was previously a camp/recreational hall and the interior finish is varied and of lower quality than assumed by the Town during its exterior inspection;
- (3) the building has no foundation (except for a small area where the heating system and utilities

are located) with the floor joists resting on rocks;

(4) comparing the assessment to other properties in the neighborhood that are of better quality indicates the assessment is excessive; and

(5) a power distribution line goes through the middle of the lot.

The Town argued the assessment was proper because:

(1) similar style properties are assessed similarly;

(2) the Taxpayers' comparable (Whitcher) is dissimilar in that it is a seasonal camp-type property and significantly larger; and

(3) the distribution power line only affects the supplemental land, not the primary house site.

The board's review appraiser, Mr. Stephan Hamilton, inspected the Property, reviewed the assessment-record card and reviewed the parties' briefs and filed a report with the board.

This report concluded the proper assessment should be \$58,600.

Note: The review appraiser's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the review appraiser's recommendation.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$60,600. This assessment is based on the board finding that Mr. Hamilton's report is the best evidence as to the condition and value of the Property, but modified by reducing the adjustment on the lot for the distribution power line from 20% to 10%.

Separate from the review appraiser's report, the board concludes the Town's assessment

overstated the quality of the dwelling based on the photographs and the general description and history of the structure. Because no improved properties had sold recently on Lake Arlington, no sales evidence was submitted by either party. Consequently, the board finds the board's review appraiser's cost approach estimate to be the best evidence of market value submitted. Further, Mr. Hamilton was able to view the interior of the Property whereas the Town had not during its assessment process.

However, because the power line easement is only for distribution lines and because the improvement is not year round, the board concludes the power lines would not be as significant a deterrent in the market (-\$4,000) as adjusted by Mr. Hamilton. However, the board concludes that it is a factor that, everything else being equal, would be considered by the market. Paras v. City of Portsmouth, 115 N.H. 63, 67-8 (1975) (In properly assessing property, municipalities must look at all relevant factors.)

Last, while no market data existed for the board to review, the revised assessment of \$60,600 appears more proportional relative to the assessed values of other properties submitted by the parties.

If the taxes have been paid, the amount paid on the value in excess of \$60,600 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 1999. 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.

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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

Steven H. Slovenski, 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 Charles and Diane Interbartolo, Taxpayers; and Chairman, Board of Selectmen of Piermont.

Date: March 24, 2000

Lynn M. Wheeler, Clerk

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