

Dianna M. and George Sullivan Jr.

v.

Town of Hebron

Docket No.: 17854-98PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$520,000 (land \$260,000; buildings \$260,000) on a 1.07-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 site was purchased and the improvements constructed for a total cost of approximately \$430,000;

(2) there is no quantitative data available at the Town offices to support or explain how the

assessments were determined;

- (3) there are assessment inconsistencies among neighboring properties along Hebron Bay; and
- (4) the Property's market value on April 1, 1998, was between \$350,000 and \$375,000.

The Town argued the assessment was proper because:

- (1) the Property is located on the more desirable, east side of Newfound Lake, giving it great views and sunsets;
- (2) the land portion of the assessment is accurate and well within the land assessment range for other waterfront properties in the Town;
- (3) the square-foot assessment base price applied to the Property's building is the same as that used on other similar waterfront properties; and
- (4) the building portion of the Property may be slightly underassessed.

After the hearing, the board directed its review appraiser, Mr. Stephan Hamilton, to review the file, inspect the Property and file a report. 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 recommendations. The parties were sent a copy of the report and given an opportunity to review and comment on the report.

Board's Rulings

Based on the evidence, the board finds the appropriate assessed value for the Property should be \$477,300 based on a market value finding of \$430,000 and the department of revenue administration's (DRA) equalization ratio for the Town of 1.11 ($\$430,000 \times 1.11 = \$477,300$).

The board finds the best evidence of market value for the Property is the board's review

appraiser's report. As previously stated, the board considers the review appraiser's report as one piece of evidence which, in this case, the board finds compelling. The board would note that in the cost approach performed by the review appraiser, the Town pointed out and the board concurs, he neglected to include the value of the garage; the board has adjusted the cost approach to reflect the additional contributory value of the garage. This calculation was performed as follows: 484 square feet of garage area x \$21.00/sf = \$10,164. This figure is multiplied by .975 which reflects the 2.5% depreciation allocated by the review appraiser to the rest of the structure. This yields a contributory value for the garage of \$9,910. This number is added to the review appraiser's previously determined value of \$428,244, not including the garage, to make a final value estimate by the cost approach of \$438,154.

The review appraiser also performed the direct sales comparison approach to value for the Property. This approach yielded an estimated value of \$420,000. The board reconciled the value estimate by the cost approach and the direct sales comparison approach to be \$430,000 and has applied the DRA's equalization ratio to this figure. This estimate of value is supported by the Taxpayers' total land acquisition and building construction costs in 1997 of \$432,500.

The board reviewed the Town's comments on the review appraiser's report and determined the review appraiser considered all factors that affected value, including the issues discussed by the Town in their Comment #1. The board has addressed Comment #2 concerning the two-car garage and with regards to Comment #3, the board reviewed the Marshal and Swift Residential Cost Handbook and determined that the Town's comments are misplaced.

If the taxes have been paid, the amount paid on the value in excess of \$477,300 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.

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

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CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Dianna M. and George Sullivan Jr., Taxpayers; and Chairman, Board of Selectmen of Hebron.

Date: September 5, 2000

Lynn M. Wheeler, Clerk

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