

Dale Delano

v.

Town of Winchester

Docket No.: 20337-03PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 abated assessment of \$63,700 (land \$39,600; buildings \$24,100) on Map 31/Lot 4, a dwelling on a 2.2-acre lot (the “Property”). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show 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) while the Town abated the original assessment by a few thousand dollars, the Property is still overassessed because it could not be sold for the value assessed by the Town;

- (2) an appraisal from Sean M. Greene (the “Greene Appraisal”) estimates the market value of the Property at \$45,000 as of the assessment date;
- (3) the house, having been converted from a carriage barn, is quite old and in a dilapidated condition, which includes construction issues, antiquated wiring (60 amp), no central heating (only a kerosene space heater) and no basement;
- (4) the Property is a nonconforming lot, with no road frontage of its own and only a 15-foot right of way over a neighboring commercial lot (a store);
- (5) the Property has town water but will only be able to access the town sewer at considerable additional expense (the dwelling being below grade of the sewer line);
- (6) this is a ‘low end’ Property whose highest and best use is probably as a ‘tear down’ making financing by a prospective purchaser difficult, reducing its market appeal; and
- (7) a further abatement should be granted.

At the hearing, the Town recommended a revised assessment of \$54,800 and argued it was proper because:

- (1) a Town-wide revaluation was performed by Nyberg Purvis & Associates in 2003;
- (2) the Town’s assessing agent, Steve Allen of Brett S. Purvis & Associates, spent a ‘fair amount of time’ reviewing the Property and concluded a revised assessment of \$54,800 is proper, based on a reduced land value of \$30,700 (from changing the “Adj” factor from 1.3 to 1.0) and an unchanged building value;
- (3) the building condition is as described by the Taxpayer, but its condition is reflected by the total of 60% depreciation applied to the replacement cost; and
- (4) the Greene Appraisal failed to make proper adjustment for the smaller lot size of the comparables used.

The parties agreed the level of assessment in the Town was 100% for tax year 2003.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$49,900 (land \$25,800 (rounded); buildings \$24,100) and the appeal is therefore granted. This assessment is arrived at by reducing the land condition factor from 90% to 75% (in addition to the other land adjustment noted above that the Town has agreed to make) and is based on two reasons.

First, the board finds some adjustment is necessary for the Property's limited access. The Taxpayer demonstrated the Property is a grandfathered lot with no road frontage of its own. Instead, access is provided by 15-foot wide right of way that bisects a commercial lot on Route 10. According to the Taxpayer, although this is a deeded right of way, some disputes have arisen regarding its use.

The Town made no adjustment for the right of way. The Town's counter-argument is that properties are sometimes benefited by being situated off the roadway. While this is a plausible argument in general, a property with fee simple property rights for access is likely to be valued more highly in the market than one with only an easement (a right of way) over an adjacent property, a circumstance that applies to the Property.

Second, the Taxpayer testified that, while the Property has public water, a public sewer connection has not been obtained, which makes the Property less desirable in the market. The house sits below the grade of the Town's sewer line that exists on Route 10 and some additional costs, including a "pump up" system, would be involved to effect a hook-up to that line.

The board also considered the Taxpayer's detailed arguments regarding the condition of the building, but concluded no further adjustment for this factor is warranted. The Greene Appraisal estimated a total value of the Property of \$45,000, with a site value of \$20,000 and an implied building value of \$25,000. The latter value is very close to the building value assessed by the Town. The Town further noted its assessment applies substantial (60%) depreciation to the building which adequately takes into account its condition.

If the taxes have been paid, the amount paid on the value in excess of \$49,900 shall be refunded with interest at six percent per annum from date paid to refund date for tax years 2003 and 2004 only given the fact the Town performed a town wide assessment update in 2005.

RSA 76:17-a.

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(f). 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

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Dale Delano, 230 Keene Road, Winchester, NH 03470, Taxpayer; and Chairman, Board of Selectmen, Town of Winchester, 1 Richmond Road, Winchester, NH 03470.

Date: 1/8/07

Anne M. Stelmach, Clerk