

Nancy Winneg

v.

Town of Hooksett

Docket No.: 20409-03PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$130,400 (land \$71,100; buildings \$59,300) on Map 17, Lot 44, a single family residence on 2.55 acres (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) an adjustment should be made for the physical condition of the house;
- (2) the Town’s assessor inspected the Property and recommended an abatement; and
- (3) the appropriate assessment should be \$120,300 based on the assessor’s recommendation.

The Town argued the assessment should be revised to \$120,300 because after an inspection of the Property, corrections to the land and building calculations are warranted, including additional depreciation to recognize the building's poor physical condition.

Board's Rulings

Based on the evidence submitted at hearing, the board finds the proper 2003 assessment to be \$120,300 based on the recommendation of the Town's assessor, Mr. Jeffrey S. Waterhouse ("Mr. Waterhouse").

The Taxpayer's appeal was simply based on the fact that while Mr. Waterhouse had recommended a reduction to \$120,300 to the board of selectmen (the "selectmen"), the selectmen had denied the abatement for 2003. Mr. Waterhouse testified that his recommendation was based on a personal inspection of the Property in June 2004, where he determined a number of adjustments needed to be made, mostly in the negative fashion, to account for inordinate depreciation including rotting sills and leaking roofs. Mr. Waterhouse also recommended a reduction of the poultry house to \$1900, an increase in the house base rate due to a listing correction, and the removal of the 20% adjustment for the stream on the rear land.

Mr. Waterhouse stated the selectmen had denied the abatement due to their belief that the total assessment of \$130,400 was appropriate for the land alone, even if the building was not considered. Mr. Waterhouse agreed that was perhaps appropriate for tax years 2004 and 2005 but not for 2003. He stated the market had increased significantly since 2003, especially for land, but for 2003 the \$130,400 assessment was excessive for the Property either as improved or as a vacant lot. Thus, it was his recommendation that to be consistent with the assessment methodology employed in the Town and the market that existed in 2003, the assessment be reduced to \$120,300.

Based on the above, the board finds the best evidence is Mr. Waterhouse's recommendation. The board notes, however, the selectmen are entirely correct that the highest and best use (possibly vacant) must be considered in determining whether the total assessment is disproportionate or not. However, based on Mr. Waterhouse's testimony that the market had increased significantly for land since 2003 and that the assessment had been revised for 2004 and 2005 to \$120,300, the board concludes the most equitable assessment for 2003 is the revised assessment of \$120,300.

If the taxes have been paid, the amount paid on the value in excess of \$120,300 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Nancy Winneg, 42 Cross Road, Hooksett, NH 03106, Taxpayer; and Chairman, Town Council, Town of Hooksett, 16 Main Street, Hooksett, NH 03106.

Date: 3/15/06

Anne M. Stelmach, Clerk