

Margaret Powers Council

v.

Town of Lyme

Docket No. 6273-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$82,400 (land, \$35,700; buildings, \$46,700) on a home that is a reconstructed barn on 7.2 acres (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved she was disproportionally taxed.

The Taxpayer argued the assessment was excessive because:

- (1)the Property had certain structural problems generally due to the lack of proper support for the chimney;
- (2)the Property had certain mechanical problems generally due to the improper installation of the heating system; and
- (3)the Property was contaminated with certain chemicals.

The Taxpayer argued the building had no value and possibly had a negative value because of the chemical contamination.

The Town, in essence, acknowledged the assessment warranted some adjustment because the 1991 revaluation assessment was \$156,100 compared with the Property's 1989 equalized value of \$206,000. The Town, however, rejected the Taxpayer's argument that the building had no value.

Before addressing the merits, the board wishes to state certain guiding principles that were applied in reaching this decision.

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Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975). In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. However, the existing assessment process allocates the total value between land value and building value. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b).

Applying these principles results in the following conclusions in this appeal. First, the problems listed by the Taxpayer must be considered as factors reducing the Property's value. Second, the Taxpayer did not present any credible evidence of the Property's fair market value. To carry her burden, the Taxpayer must make a showing of the Property's fair market value. This value will then be compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18. Nonetheless, the Taxpayer did submit sufficient other evidence to persuade the board to make adjustments for the mechanical and structural defects and for the chemical contamination.

The board has decided to use the 1991 revaluation numbers as a starting point since the Town's equalization ratio for 1989 was 40% and the coefficient of dispersion was 24.52, whereas, the preliminary equalization ratio for 1991 is 104%. So, we assume the Property's 1989 full value, before adjustments discussed below, was approximately \$165,470, allowing a time adjustment back to 1989 of 6% ($\$156,100 (1991) \times 1.04 (1990) \times 1.02 (1989)$). This \$165,470 is broken down \$62,965 land and \$102,505 building. The board makes the following

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adjustments to the main building only:

(a) additional 10% physical depreciation for the mechanical problems, evidenced
by Mr. Carpenter's cost-to-cure estimate;

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without any ill

effects. Nonetheless, the reports showed there was some degree of chemical

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contamination, and this would certainly be considered a detriment by a buyer, especially since any knowledgeable lender would be cautious to lend on the Property until the problem was abated.

The adjustments the board has made may change over time as repairs are made, as the chemical problem abates, or as market conditions change.

In conclusion, the board finds the Property has a value significantly above that assigned by the Taxpayer but somewhat below that assessed by the Town. The board hopes the parties will use this decision in guiding settlement discussions for subsequent tax years.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Peter Marsh, Esq., Representative for the Taxpayer; and Chairman, Selectmen of Lyme.

Valerie B. Lanigan, Clerk

Date: April 7, 1992

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