

Joseph C. and Emily A. Tropeano

v.

Bradford

Docket No.: 8334-90

DECISION

The Taxpayers appeal, pursuant to RSA 76:16-a, the Town's 1990 assessment of \$38,900.00 (land - \$6,400.00, buildings - \$32,500.00) on Main Street, consisting of a single family dwelling with garage situate on .26 acres of land (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. 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 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 Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

1) in comparison to neighbor's home which has more square footage, frontage, acreage and living area, Taxpayers' assessment is much higher; and

2) the small size of property warrants a lower assessment and not one of \$45,300.00.

The Town argued the assessment was proper because:

- 1) the Taxpayers appeal is based upon incomplete comparison to an adjoining property;
- 2) the Taxpayers miscalculated the footage in their comparison;
- 3) the Taxpayers say the assessed value is \$45,300.00, when it really is \$38,900.00;
- 4) both properties (subject and neighbors') sold for exactly the same price within a 2-1/2 year period, which indicates that the true value of both, regardless of building size, was comparable; and
- 5) the Taxpayers were given adjustments for physical and functional depreciation.

Board Findings

The board finds the proper assessment should be \$38,900 (land, \$6,400; building, \$32,500) for the following reasons:

- 1) the Town valued the Property at \$38,900 on the property-assessment card but billed the Taxpayers based on a valuation of \$45,300 (land, \$6,400; building, \$38,900);
- 2) the Town argued in its submittal that the total valuation of \$38,900 was proper;
- 3) the Taxpayers evidence supports a total assessment of \$38,900; and
- 4) it appears from the evidence that the Town made an error in its billing by copying the total assessed value from the property-assessment card onto the

tax bill as the building value thereby double counting the land value of \$6,400.

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If the taxes have been paid, the amount paid on the value in excess of \$38,900 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Further, whenever the board grants an appeal because of clerical error or plain and clear error of fact, and not interpretation, RSA 76:7-a authorizes the board to order the Town to reimburse the Taxpayers' filing fee.

The board finds such an order is appropriate, and the Town is ordered to reimburse, within ten (10) days of the clerk's date, the Taxpayers' \$40.00 filing fee.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3.

The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph C. and Emily A. Tropeano,

Taxpayers; and Chairman, Selectmen of Bradford.

Dated: March 18, 1993

Melanie J. Ekstrom, Deputy Clerk

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