

**Thomas J. and Linda Z. Baker**

**v.**

**Town of Langdon**

**Docket No.: 8415-90**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessments of: \$201,250 on Lot 9709, a residential lot consisting of a single-family home with two garages, a barn, and sheds; and \$649,900 on Lot 5427, a commercial lot consisting of an office, warehouse, storage garage, and two sheds (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. 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 on both lots.

The Taxpayers argued the assessment on Lot 9709 was excessive because:

1) the lot has only 48 feet of road frontage, and the 5% adjustment given by the Town for access was insufficient;

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- 2) the Town's value on the garages, barn, sheds, decks and basement finish exceeded their replacement cost;
- 3) the solar water heater panels are temporary and not functioning; and
- 4) the Property is unfinished.

The Town only submitted the assessment record card for this lot.

The Taxpayers argued the assessment on Lot 5427 was excessive because:

- 1) the taxes increased \$9,825.98 in one year;
- 2) the lot was purchased for \$12,000 in 1986 but was not a buildable site then because of topographical problems;
- 3) the lot cannot be fully developed because of water and grade problems;
- 4) the lot's location has a negative impact on rental income;
- 5) the lot assessment was more than twice the assessment of the Town's comparable; and
- 6) the Town's cost approach on the building exceeded the construction costs.

The Town argued the assessment on Lot 5427 was proper because:

- 1) the lot has considerable site-work value;
- 2) the Taxpayers' income approach was unsubstantiated;
- 3) the Taxpayers' cost approach was inaccurate because they built the buildings themselves, and thus, their costs did not reflect market construction costs;
- 4) the lot's proximity to traffic increases value; and
- 5) there are no water and grade problems.

Board's Rulings

Based on the evidence, we find the correct assessments should be \$180,650 on Lot 9709, and \$555,550 on Lot 5427. These assessments are ordered for the following reasons.

Lot 9709

1) the dwelling should be graded a class 3.5 and receive 5% additional functional depreciation for the less than full utility of the solar panels and the lower cost basement finish;

2) the attached garages should receive 15% additional functional depreciation for their size and unity of construction;

3) the barn, attached shed, and pole buildings should all have 40% functional depreciation for utility and low cost construction; and

4) no further adjustment was warranted as the Taxpayers submitted no evidence on how the narrow access to the building site affects its market value, nor did the Taxpayers submit any evidence as to what portions of the house are unfinished.

The changes listed above result in a proper assessment for Lot 9709 of \$180,650 (land \$50,450; buildings \$130,200).

Lot 5427

1) the photographs show the land assessment warrants an undeveloped adjustment of -18% for its topography and utility resulting in a proper land

assessment of \$71,750;

2) the board finds the building assessment should be reduced by 15% for three reasons:

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a) the Town's cost calculation contained incorrect area-to-perimeter multipliers that were calculated based on the dimensions of each section rather than properly on the entire contiguous building;

b) the warehouse area has no office area within it as is allowed in the base price used by the Town; and

c) based on the board's experience and the Taxpayer's evidence, the building is over built for the area. 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).

These adjustments result in a proper assessment for Lot 5427 of \$555,550 (land \$71,750, buildings \$483,800).

If the taxes have been paid, the amount paid on the values in excess of a \$736,200 total shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

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I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas J. and Linda Z. Baker, Taxpayers, and Chairman, Selectmen of Langdon.

Dated: November 12, 1992

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Melanie J. Ekstrom, Deputy Clerk

**Thomas J. Baker and Linda Z. Baker**

**v.**

**Town of Langdon**

**Docket No. 8415-90**

**ORDER**

This order responds to the "Taxpayers'" reconsideration motion, which is denied. Before reaching the motion's merits, the board must address the Taxpayers' failure to timely file the reconsideration motion. Under RSA 541:3, reconsideration motions must be filed within 20 days of the decision. The Taxpayers claimed they did not receive a copy of the decision until December 21, 1992. For the record, the board notes that a copy of the decision was sent to the Taxpayers at their proper address with the correct postage and with the board's return address on the envelope. While the Taxpayers claimed they did not receive the letter, the board did not receive any returned letter. Furthermore, the Town received its copy of the decision.

Nonetheless, the question of whether the Taxpayers actually received the letter is a question of fact that would have to be resolved at a hearing. Rather than requiring the parties to travel to the board and appear at a hearing, the board will assume the Taxpayers did not receive the decision when first mailed, and thus we will treat the reconsideration motion as timely filed.

The Taxpayers' motion fails to state any "good reason" to support reconsideration. See 541:3, 4. The motion asserts the following errors:

1) the Taxpayers assumed they could use the expedited procedure and if dissatisfied with the results, then have an oral hearing;

2) after receiving the board's decision, they learned of the importance of submitting their own appraisal; and

3) the Taxpayers have contacted an appraiser who "informed them" that the property's market value was less than that determined by the board. None of these arguments are sufficient to warrant a rehearing.

The Taxpayers elected to use the expedited procedure, and they cannot now seek a full hearing simply because they are not happy with the decision. The April 12, 1991 letter informed the Taxpayers that they were entitled to an oral hearing, but they could waive that right to obtain a more prompt decision. Specifically, the letter asked the following question: "ARE YOU WILLING TO HAVE THE BOARD OF TAX AND LAND APPEALS EXPEDITE ITS DECISION IN THIS CASE BASED ON WRITTEN BRIEFS AND/OR STATEMENTS SUBMITTED BY EACH PARTY, WITHOUT A HEARING?" The Taxpayers answered "yes". The letter also stated the expedited process would not "affect either parties' right to file a motion for reconsideration or rehearing and to subsequently appeal to the New Hampshire Supreme Court." The Taxpayers have availed themselves of this procedure by filing the reconsideration motion. However, motions for reconsideration and rehearing are governed by RSA 541:3 and require the moving party to show that, based on the evidence presented, the board erred as a matter of fact or law. The Taxpayers do not challenge the board's decision based on the evidence presented. Rather, they now want to obtain the testimony of an appraiser and to use his/her report to support their appeal. The Taxpayers did not have the appraiser's opinion when they filed the appeal or when they submitted their expedited brief. Moreover, it appears they have merely contacted this appraiser, but they have not yet obtained an appraisal.

Based on the above, and assuming the Taxpayers timely filed because they never received the board's decision when first mailed, we find the Taxpayers' motion fails to state any good reason in law or fact for rehearing or reconsideration. The motion is the Taxpayers attempt to have a second bite

at the apple because they are unhappy with the board's decision that was arrived at based on the information available to the parties and the board when the file was reviewed for decision.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas J. and Linda Z. Baker, Taxpayers, and Chairman, Selectmen of Langdon.

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Melanie J. Ekstrom, Deputy Clerk

Date: January 27, 1993

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