

Mark and Doni-Anne Way

v.

Town of Marlborough

Docket No.: 9723-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$91,630 (land \$26,330; building \$65,300) on Map 11, Lot 7, an 18.6-acre lot with a single-family home (the Property). The Taxpayers own, but did not appeal, Lot 1, a 21.7-acre, vacant lot in current use assessed at \$1,750. 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).

The Taxpayers argued the assessment was excessive because:

1) the house was incomplete on April 1, 1990, e.g., the second floor, chimney and trim were not finished, the stairs were only temporary, and there were no closet doors or landscaping;

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- 2) the Property's per-square-foot value was \$57.88, yet the comparables' per-square-foot value was \$49.17, and the average total assessment per-square-foot of the comparables was \$69.27, yet the Property's was \$78.34;
- 3) the house was assessed as 1-3/4 stories when it was only 1-1/2 stories;
- 4) comparable properties had an average \$78,733 assessment;
- 5) the Town's land value reduction does not adequately address the lot's poor condition in 1990; and
- 6) the assessed value should be \$72,068.

The Town reviewed comparable log homes in the area and revised the assessments to correct miscellaneous errors. The Town recommends adjusting the Taxpayers' assessment to \$88,260. The Town argued the adjusted assessment is proper because:

- 1) the Property had more square footage than the comparables and an extra 1/2 bath; and
- 2) a 3% depreciation factor was applied to address the open-loft area.

The board's inspector reviewed the assessment-record card and filed a report with the board. This report concluded the Town's recommended adjustment is proper and no further adjustments are warranted.

Board's Rulings

Based on the evidence, the board finds the Town's review and adjustments reasonable except they did not account for the unfinished items as of April 1, 1990 enumerated in the Taxpayers' brief. The board finds that an additional 5% functional depreciation is warranted for those items. No further abatement is warranted because the Taxpayers did not present any

credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value.

This value would then have been 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.

Further, averaging building values, as done by the taxpayers, does not necessarily prove "disproportionality"; it only proves that the taxpayers' property is assessed more than the average property. Appraisals are not averages; rather they are the correlation of general sales data to the unique characteristics of a specific property. Therefore, the board finds the proper assessment is \$85,010 (land, \$24,960; building, \$60,050).

If the taxes have been paid, the amount paid on the value in excess of \$85,010 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark and Doni-Anne Way, Taxpayers; and Chairman, Selectmen of Marlborough.

Dated: April 23, 1993

Melanie J. Ekstrom, Deputy Clerk

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