

Jonathan N. and Helen Sargent

v.

Town of Wilton

Docket No.: 9881-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$54,800 (land \$18,900; buildings \$35,900) on a 2-acre lot with a house (the Property). 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 203.09(a); 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) the house is an 816 square-foot, ranch, of 2x6 construction with siding imitating log construction;
- (2) the house is open concept home of average construction, but the Town assessed the house above-average construction;
- (3) the Property has a drainage ditch on the lot that helps to defer water runoff into the basement;

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- (4) there were errors on the tax card, i.e., the house has only wood-stove heat with electric backup -- there was no furnace, and the downstairs bath is only a 3/4 bath (in 1990 there was only a shower and toilet);
- (5) the Town assessed the woodstove flue at \$900 and the 204 square-foot porch at \$2300, both of which were excessive;
- (6) the Property, when equalized by DRA's 47% equalization, had a \$140,000 value, and the Property would not sell for that much;
- (7) newer homes in the area had high depreciation factors, but the Property had only a 1% depreciation factor;
- (8) a 1991 appraisal estimated a \$75,000 value, and a 1990 opinion of value estimated a \$105,000 market value in a strong market;
- (9) the Property would not have sold for more than \$80,000 to \$85,000; and
- (10) the Town's comparables were all built in 1990 and 1991.

The Town argued the assessment was proper because:

- (1) the Taxpayers' 1991 appraisal was not trended to the 1990 assessment date despite values having declined 8% during that period; and
- (2) the Taxpayers' appraisal was flawed because the appraiser did not submit any data to support his adjustments for time, lot size, building condition, or age;
- (3) the appraiser's comparables were not located in the Town;
- (4) the same methodology was used throughout the Town and the assessments were based on benchmark standards established during the 1983 revaluation, and the Taxpayers' porch and woodstove flue were assessed using these standards;

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(5) comparable log homes supported the Property's assessment, and there is a market for log homes or log styled homes; and

(6) the Taxpayers' home has drywall interior as opposed to rough-hewn timber walls, which increased the Property's value.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$51,600

(land \$18,900; buildings \$32,700). This assessment is ordered because:

(1) based on the age and the photographic evidence submitted, the board finds that physical depreciation of 5% should be applied to the dwelling; and

(2) a 5% functional depreciation should be applied to account for the electric heating system as of April 1, 1990; such heating systems do not normally contribute a comparable amount to the market value of the Property as a gas or oil fired heating system.

No further abatement is warranted because:

(1) the board gives little weight to the Taxpayers' appraisal due to the unsubstantiated and inconsistent adjustments made in the analysis;

(2) the board, was unable to rely upon the opinion of value offered by the Taxpayer's because the Taxpayers did not submit or testify as to the basis for the value conclusion; and

(3) the Taxpayers did not present any other 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

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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; and (3) the comparable properties submitted by the Town did contain several properties that had sold around the assessment date; these sales indicated that the Town's general methodology for assessing was shown to be proportional based on recent market transfers.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Jonathan N. Sargent, Taxpayer; and Chairman, Selectmen of Wilton.

Dated: December 21, 1993

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Valerie B. Lanigan, Clerk