

Elena Dunlop

v.

Town of Middleton

Docket Nos.: 9965-90PT and 12474-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessment of \$116,250 (land \$70,400; buildings \$45,850) on a 6,880 +/- square foot lot with a cottage (the Property). For the reasons stated below, the appeal for abatement is granted to the Town's adjusted assessment of \$115,600.

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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

The Taxpayer argued the assessment was excessive because:

- (1) the land value was not in proportion to market value;
- (2) the house was built in 1969 or 1970 and the effective age is greater than 6 years;
- (3) the cottage has a floor furnace, windows are deteriorating and the house is peeling on one side, the septic tank needs repair and there is only parking on the lot for 2 cars;
- (4) comparable property sales support overassessment; and

(5) the Property could probably be sold in 1991 for \$85,000 to \$90,000.

The Town argued the assessment was proper because:

- (1) an adjustment was made for the floor furnace vs. hot air, reducing the assessment to \$115,600;
- (2) the effective age on the Property is 6 years but the cottage has been depreciated by 18% to reflect its age;
- (3) the assessment was based on sales utilized during 1987 to 1992 and the Town correlated the sales and arrived at a front-foot value of \$800;
- (4) the land values were consistent with all other site values on the point and the double lots were assessed higher; and
- (5) comparable sales support the assessment.

Board's Rulings

Based on the evidence, we find the correct assessment for 1990 and 1991 should be \$115,600 (land \$70,400; building \$45,200). This assessment is ordered based on the Town's recommended adjustment for the floor furnace vs. hot air. No further adjustments are warranted because the board finds that the Town made adequate physical and functional depreciation to the cottage based on the testimony of the condition of the building. The board finds the Town supported its assertion that the land value was in line with all other assessments and that double lots were assessed higher than single lots.

If the taxes have been paid, the amount paid on the values in excess of \$115,600 per year shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992 and 1993. Until the

Town undergoes a general reassessment, the Town shall use the

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ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Elena Dunlop, Taxpayer; Mary E. Pinkham-Langer, Agent for the Town of Middleton; and Chairman, Selectmen of Middleton.

Dated: June 27, 1994

Valerie B. Lanigan, Clerk

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