

Carmine and Waltraud Martignetti

v.

Town of Sandown

Docket No.: 10944-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$49,600 (land, \$30,000; building, \$19,600) on 1.40 acres with a camp (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 denied.

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 failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

- 1) there is minimal access to the Property;
 - 2) the building is not habitable, i.e., no utilities, plumbing or insulation;
- and
- 3) the building has no value.

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The Town argued the assessment was proper because:

- 1) the building was noted as a shell only and reduced in 1990 from \$25,000 to \$19,200;
- 2) all properties in the area do not have utilities, i.e., water and electricity and all have access through a nonmaintained road and the assessments reflected that; and
- 3) Taxpayers assessment was proportional to similar properties in the area.

The board's inspector reviewed the assessment-record card, reviewed the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the assessment should be adjusted for physical and functional depreciation. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation. The board did not rely on the report because the inspector did not view the Property's interior.

Board Findings

Based on the evidence, the board finds the Taxpayers did not carry their burden of proof. The board agrees the Taxpayers' photographs draw into question whether the 26% physical depreciation was sufficient. However, the board is not sure whether the photographs are representative of the building's overall condition or whether the photographs are merely evidence of the building's worst conditions. Specifically, the notes on the property-record

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card indicated that the interior was in fair to good condition. Therefore,

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given the lack of certainty, the board was unable to conclude the 26% depreciation was insufficient.

Additionally, the Town's information indicated that the assessments for similar properties were proportional to the Property's assessment.

Finally, the Taxpayers should have introduced some market data from which the board could have determined whether the assessment was correct or not for the Property as a whole, that is, land and building. 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.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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 in law. Thus, new evidence and new arguments are only allowed in very

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limited circumstances as stated in board rule TAX 201.37(e). Filing a reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Carmine and Waltraud Martignetti, Taxpayers; and Chairman, Selectmen of Sandown.

Dated: May 6, 1994

Melanie J. Ekstrom, Deputy Clerk

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