

Thomas B. Place

v.

Town of Francestown

Docket No.: 11014-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$386,000 on a 2 1/2 story residence on 7.5 acres (the Property).

For the reasons stated below, the appeal for abatement is granted.

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). We find the Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the building assessment was disproportional when compared to other properties;
- (2) the Property has several deficiencies, including lack of heat, the buildings need painting and structural work, the chimneys need work, there is

no insulation in the brick house, a damp cellar, drop ceilings, and the roof needs to be replaced;

(3) the assessment card includes some errors;

(4) the assessment card may represent the replacement costs but does not reflect what someone would pay for the Property;

(5) from 1989 to 1990 the assessment increased significantly and more than other assessments; and

(6) the assessment should have been \$252,800, which would make the Property the sixteenth most valuable property in the Town as it was before the 1990 revaluation.

The Taxpayer submitted an exhibit that compared the Property's building assessment to the building assessments on nine other properties.

The Town argued the assessment was proper because:

(1) the Town reviewed the assessment and lowered it to address the deficiencies raised by the Taxpayer;

(2) the Property is unique because its in the village yet has a good-size lot unlike other properties in the village that have very small lots; and

(3) the properties in the village district command a premium and the Property is in the village.

The Town also argued the Taxpayer's comparable analysis could not be relied upon because there were valid reasons for the building assessments thereon, especially given the interior conditions that may not be obvious from the exterior.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$320,800 (land \$60,800; buildings \$260,000).

The board finds the Taxpayer submitted sufficient evidence that the buildings contained areas of further physical and functional obsolescence that the Town had not adequately accounted for in their assessment. These items of obsolescence include:

- 1) the general condition of the interior and exterior;
- 2) the old furnace still in place in 1991;
- 3) the difficulty in adequately insulating a brick structure;
- 4) the reduced utility of the third floor finished area; and
- 5) most significantly, the renovations have not been in keeping with the original quality of the house.

Further, based on the testimony and photographic evidence, the board finds the barns need to be further reduced to more properly reflect their contributory value due to their condition and utility.

Based on the above findings, the board finds that the dwelling should be depreciated 35% for its physical condition and 10% for its functional utility to arrive at a proper assessment of the dwelling at \$229,500. The fireplace should be adjusted by a .74 condition factor (combined index quality factor of $1.352 \times$ total depreciation of .55) which would be comparable to the depreciation on the dwelling.

The two main barn valuations should have their condition factors reduced to .4 based on the testimony and photographic evidence submitted.

Based on the above findings, a summary of the proper assessment is as follows:

dwelling		\$229,500
fireplace		3,700
barn (one story)		2,550
barn (one story/loft/basement)	5,950	
barn (one story)		1,347
lean-to		194
shed-wood		731
patio		650
tennis court	10,500	
two sheds		400
fireplace		<u>4,500</u>
total improvements		\$260,000 (rounded)

Concerning the assessment increase from 1989 to 1990, we note that increases from past assessments are not evidence that a taxpayer's property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985).

If the taxes have been paid, the amount paid on the value in excess of \$320,800 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, 1993 and 1994. Until the Town undergoes a general reassessment, the Town shall use the 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 thirty (30) 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

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas B. Place, Taxpayer; and Chairman, Board of Selectmen of Frankestown.

Dated: March 16, 1995

Valerie B. Lanigan, Clerk

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ORDER

This order relates to the "Taxpayer's" reconsideration motion. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3.

The Taxpayer's request for a further reduction is not supported by the evidence. Specifically, at the hearing the Taxpayer did not present any credible evidence of the property's fair market value. To carry his burden for a further reduction, the Taxpayer 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 of Francestown. 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. Without such market data, the board could only make adjustments to the assessment as calculated by the town.

Motion denied.

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BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

I certify that copies of the within Order have this date been mailed, postage prepaid, to Thomas B. Place, Taxpayer; and Chairman, Board of Selectmen.

Date:

Valerie B. Lanigan, Clerk

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