

**Thomas D. McClure, Sr.**

**v.**

**Town of Hillsborough**

**Docket No.: 11054-91 PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$49,150 (land \$16,850; buildings \$32,300) on a 3.76-acre lot with a seasonal, take-out restaurant (the Property). The Taxpayer also owns, but did not appeal, another lot containing two restaurants and an apartment assessed at \$168,300. The Taxpayer 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 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 failed to carry this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Property is in a flood zone;

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(2) the Property is not in a prime, commercial location because it is zoned rural and the Town made a special exception to allow the restaurant conversion;

(3) the Town water and sewer were installed at the Taxpayer's expense and must be maintained by the Taxpayer, including 520' of sewer line;

(4) the building required extensive renovations after a fire in 1988, and the building was not completed until after May 5, 1991;

(5) the Property was purchased from an estate on March 13, 1990, for \$55,000 after extensive renovations and a year on the market; the estate appraiser estimated a \$65,000 to \$70,000 value in 1989;

(6) the only electrical work performed by the Taxpayer was upgrading the electric panel from 100 to 200 amperes; and

(7) the assessment increased by 70%, and when equalized by the 49% equalization ratio, the Property's value would have been almost \$93,000, which is unrealistic.

(The board notes the equalization ratio in 1991 was actually 61%.)

The Town argued the assessment was proper because:

(1) the assessment was reduced to address the frequent flooding;

(2) the Property was converted from a residence to a restaurant;

(3) the Property is located on the main street and in a prime, commercial location;

(4) the renovations included Town water and sewer hookups, which increased the Property's value; and

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(5) the true renovation costs cannot be determined because the Taxpayer is a licensed electrician and, therefore, his costs were cheaper.

The board's inspector reviewed the assessment-record card and 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 was proper. 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. In this case, the board did not rely on the inspector's report.

#### Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to carry his burden and prove disproportionality. Further, the board notes the Taxpayer estimated approximately \$11,000 worth of improvements, which he felt were legitimately taxable. The Taxpayer noted that he is a licensed electrician and that he was able to change the electrical panel from 100 to 200 amperes service "inexpensively." The Taxpayer did not submit receipts, material costs or estimates to show contributory value of work performed under his supervision prior to April 1, 1991. The Duggan appraisal was prepared on February 1, 1989, two years before the date of assessment, April 1, 1991, prior to the Taxpayer's purchase and prior to the extensive renovations made; therefore, it offers little, if any, probative value of the Property as of April 1, 1991.

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The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, 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. 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.

The 1991 equalization ratio was 61%. The equalized value of \$80,600 (at 61%) suggests the assessment is within a reasonable range of market value.

We find the Taxpayer failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

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 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas D. McClure, Sr., Taxpayer; and Chairman, Selectmen of Hillsborough.

Dated: 4/21/94

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Lynn M. Wheeler, Deputy Clerk

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