

Arthur E. and Sandra J. Cody

v.

Town of Swanzey

Docket No.: 11147-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$232,900 (land \$20,900; buildings \$212,000) on a 7.94-acre lot with three, single-family homes (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. However, after reviewing the written submittals and due to the complexity of this case, the Board found it must hold a hearing in order to arrive at an appropriate decision. 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 Property was in poor condition on April 1, 1991 and was never inspected by

the Town;

(2) the "garage" was unfinished, built on slab, improved as a 1-bedroom, 1-bathroom, kitchen/living room combination, had no heating system, an old septic system and a new dug well;

(3) the "barn" was unfinished, improved as a 1-bedroom, 1-bathroom, kitchen/living room combination, ground floor is dirt, no septic system (only holding tank), artesian well, forced hot air system on the second floor; and

(4) neither the garage nor the barn could be rented as finished structures and the assessments should be \$33,400 for each.

The Town argued the assessment was proper because:

(1) the Property was inspected (exterior) on March 30, 1991, and the Property was improved at that time;

(2) building permits were issued in 1987 for the barn and garage but there were never any permits to convert to living area;

(3) the Taxpayers applied for subdivision in October, 1991, and testified at the planning board meeting that the buildings were completed and occupied;

(4) the Taxpayers' septic designs, which were approved for the two secondary dwellings, were designed for three-bedroom homes;

(5) the photo of the garage submitted by the Taxpayers shows an exhaust vent in keeping with the Town's listing of unducted hot air heat; and

(6) the sketch of the barn submitted by the Taxpayers notes a workshop with furnace on the first floor; the description would be more accurate as a 1-story with storage area and an assessment of \$49,900 (same as "garage") would be appropriate.

Page 3

Cody v. Town of Swanzey

Docket No.: 11147-91PT

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. The inspector questioned the depreciation and extent of completion of the buildings. 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.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$193,400 (land \$20,900; improvements \$172,500). This assessment is ordered because:

- 1) the "garage" (card #2) and the "barn" (card #3) were not properly listed as to the amount of living area and percentage of unfinished components;
- 2) the replacement cost of the "garage" should be reduced by a total of 30% for the unfinished floors and siding, and the lack of heat as of April 1, 1991 and for its accessory nature to the primary dwelling;
- 3) the replacement cost for the "barn" should be calculated as the second floor being a 3/4-story and the first floor classified as storage having 35% of effective square footage of the base; the effective area of 845 square feet multiplied times the square foot price of \$62.92 (derived from the similar size "garage" building) results in a replacement cost of \$53,167;
- 4) the "barn's" replacement cost should be reduced by a total of 30% for the unfinished floors, temporary stairs and the accessory nature of the structure; and
- 5) an estimated \$6,000 should be added to account for the value of the dug well,

Page 4

Cody v. Town of Swanzey

Docket No.: 11147-91PT

artesian well, old septic tank and holding tank that serviced the "garage" and "barn" in 1991.

In summary the Property is valued as follows:

land		\$20,900
wells, septic tank and holding tank		\$ 6,000
house	(card #1)	\$92,500
garage	(card #2)	\$36,800
barn	(card #3)	<u>\$37,200</u>
		\$193,400

If the taxes have been paid, the amount paid on the value in excess of \$193,400 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 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 "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

Page 5

Cody v. Town of Swanzey

Docket No.: 11147-91PT

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

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Arthur E. & Sandra J. Cody, Taxpayers; and Chairman, Selectmen of Swanzey.

Dated: June 3, 1994

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Valerie B. Lanigan, Clerk