

Paul V. and Karen E. Lucey

v.

Town of Sandown

Docket No.: 11179-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$149,800 (land \$62,200; buildings \$87,600) on a 2.54-acre lot with a house (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 and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) a swamp covers 60% of the Property;
- (2) the taxes were abated for tax year 1990, yet the assessment increased 152% for tax year 1991 when there were no changes to the Property;

Page 2

Lucey v. Town of Sandown

Docket No.: 11179-91PT

- (3) the land value was increased by a 5% condition factor when there were no improvements made;
- (4) a comparable home with more extra features sold in December, 1991 for \$118,000;
- (5) the Property's market value is approximately \$108,000, which equates to a \$124,200 equalized assessment; and
- (6) market values are declining, and therefore, assessment increases are not warranted.

The Town argued the assessment was proper because:

- (1) the assessment was consistent with other properties in the Town;
- (2) the land value condition factor was increased because the road was approved by the Town;
- (3) the building value increased by only 45%, not 145%, and the increase addressed the building's completed construction; and
- (4) one comparable sale cannot establish the Property's value.

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.

Page 3

Lucey v. Town of Sandown

Docket No.: 11179-91PT

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed. We also find the Town supported the Property's assessment.

The Town correctly adjusted the condition factor on the land to reflect an approved road from a nonapproved road, and adjustments were made to the building's value based on its stage of completion on April 1, 1991 (97%). The Taxpayers submitted evidence of a comparable sale dated December, 1991. However, no time adjustments were made to the sale to reflect its value as of April 1, 1991, the date of assessment, and no evidence was offered as to how the estimated market value of \$10,000 for additional improvements was arrived at. The Town submitted evidence to suggest the sale, when properly adjusted, was assessed proportionately to the subject. The board reviewed the Department of Revenue Administration's equalization ratios for 1991 (115%) and 1992 (132%). That information suggests that the comparable sale, when time adjusted to the date of assessment and appropriately adjusted for building differences, supports the 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.

Page 4
Lucey v. Town of Sandown
Docket No.: 11179-91PT

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.

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 Paul V. and Karen E. Lucey, Taxpayers; and Chairman, Selectmen of Sandown.

Dated: March 15, 1994

Lynn M. Wheeler, Deputy Clerk

0005