

Bernard H. and Helen A. Liberi, Jr.

v.

Town of Milton

Docket No.: 11186-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of: \$104,600 (land \$27,000; buildings \$77,600) on Lot 71, a 2.58-acre lot with a house; and \$20,200 on Lot 45, a vacant, 4.3-acre lot (the Properties). 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 abatements is granted.

The Taxpayers have the burden of showing the assessments were 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 assessments were excessive because:
(1) the building suffers from water damage and has poor electrical wiring and plumbing;

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- (2) the Properties were recently listed for sale for \$125,000, including both lots and all the furniture and appliances in the house;
- (3) a realtor's January, 1992 value opinion estimated an \$80,000 to \$85,000 market value for Lot 71, and a \$13,000 to \$15,000 market value for Lot 45;
- (4) the Town reduced the assessments on four other log homes in the area with fully landscaped lawns, but will not even address the Taxpayers' concerns; and
- (5) the Town stated that if the Taxpayers' appealed the assessments "they would probably win," and the inspector stated he "would see what he could do" about abating the taxes.

The Town argued the assessments were proper because:

- (1) the State electrical inspector stated the building's electrical wiring was average but could be improved at no cost to the Taxpayers, but the Taxpayers refused to let the electrician into the house;
- (2) the building value was depreciated to address the cracks in the foundation, but since the Taxpayers could provide no evidence of the other problems, no further adjustments were made to the assessment; and
- (3) the Taxpayers' listing price for the Properties supports the Properties' 1991 assessment.

The board's former inspector reviewed the assessment-record cards 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 on Lot 45 was proper, and the assessment on Lot 71 should be \$100,750 (land \$27,000; buildings \$73,750). The inspector applied a 5%

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depreciation to the building value to address the issues outlined on the assessment-record card, i.e., leaking roof and cracked foundation. 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: Map 22, Lot 71, \$100,750 (land, \$27,000; buildings, \$73,750) and Map 22, Lot 45, \$20,200.

This assessment is ordered because:

- (1) the board agrees with the inspector that an additional 5% functional depreciation should be allowed for the problems with the house noted on the assessment record card; and
- (2) the realtor's letter, while not detailing the specific adjustments made to the sales to make the sales comparable to the Property, did provide some general market data of similar properties.

The ordered assessment is proportional and no further adjustment is warranted because:

- (1) no evidence was submitted relative to the market value of the separate lot other than the realtor's letter which provided no evidence as to the comparability of the lots that sold with the Taxpayers' lot;
- (2) the combined assessments of the two properties of \$120,950 when equalized by the Town's 1991 and 1992 ratio of 112% indicates a market value of \$107,991 ($\$120,950 \div 1.12$); and

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(3) the total indicated market value of \$107,991 for both lots is bracketed by the realtors opinion of value of approximately \$100,000 and the Taxpayers' listing of both properties with furniture and appliances at \$125,000.

If the taxes have been paid, the amount paid on the value in excess of \$120,950 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 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

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 Bernard H. and Helen A. Liberi, Jr., Taxpayers; and the Chairman, Selectmen of Milton.

Dated: March 31, 1994

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Lynn M. Wheeler, Deputy Clerk