

Denis T. Curran

v.

Town of Groton

Docket No.: 11194-91 PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$87,700 (land \$17,550; buildings \$70,150) on a 9-acre lot with a house (the Property). 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 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.

The Taxpayer argued the assessment was excessive because:

- (1) the Property is on a road not maintained by the Town, resulting in higher insurance premiums, added costs for snow removal, and higher car repairs;
- (2) the Property has no access in the spring and winter months, and is

therefore only a seasonal camp;

(3) the house was incomplete on the assessment date, there is no attached shed, and most of the land is not usable because of steepness;

(4) emergency vehicles would not be able to reach the Property;

(5) the Town failed to adequately address or explain the Taxpayer's concerns;

(6) the Town's comparables were not comparable because two were on paved, town-maintained roads, and one was larger with a cement basement and fireplace; and

(7) the Property would never sell for the assessed value.

The Town argued the assessment was proper because:

(1) the Property was assessed \$100 per-front-foot to address the nonmaintained road, which is typical for dirt roads -- paved roads are assessed \$120 per-front-foot;

(2) the Property's road and seasonal use were addressed with a 20% depreciation factor;

(3) the Property's unusable land was assessed at only \$600 per-acre;

(4) the Property's lack of Town services would be reflected in the sale price; and

(5) the Property is assessed consistently with other comparable properties in the Town.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$84,250 (land \$17,550; building \$66,700). This assessment is ordered based on an additional 5% functional depreciation on the dwelling due to the limited area and utility of the basement.

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No further abatement is warranted because:

- (1) the Town had already reduced the land valuation by 20% due to the unmaintained road conditions;
- (2) the Taxpayer did not show that such adjustment was unreasonable based on any market data;
- (3) the Taxpayer's contention that the attached shed is a storage area is nothing more than semantics;
- (4) the revised assessment, when equalized by the Town's 1991 ratio of 124%, indicates market value of \$67,950 ($\$84,250 \div 1.24$);
- (5) this indicated value of \$67,950 is reasonable, based on photographic evidence and the general evidence submitted by both parties;
- (6) the Taxpayer did not show that a market value of less than \$67,950 was warranted because 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.

If the taxes have been paid, the amount paid on the value in excess of \$84,250 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.

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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.

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 Denis T. Curran, Taxpayer; and Chairman, Selectmen of Groton.

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Dated: March 1, 1994

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Lynn M. Wheeler, Deputy Clerk