

Walter R. and Ethel H. (deceased) Dyar

v.

Town of Gorham

Docket No.: 11303-91 PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$130,600 (land \$76,000; buildings \$54,600) on a 66-acre lot with a house (the Property). The Taxpayer also owns, but did not appeal, Lot L6C, a 1.1-acre lot assessed at \$13,100. 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 and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the house was built in 1835 with poles and logs and not 2x4 or 2x6

construction as stated by the Town;

(2) the house has oil and wood heat and not gas heat, and the walls are horsehair plaster;

(3) a 125% increase of value for the view is subjective; and

(4) the Town's appraiser never entered the home.

The Town argued the assessment was proper because:

(1) the Property was inspected, interior and exterior, on September 6, 1990;

(2) the one-acre house lot was adjusted +25% for the view and -5% for topography -- the remaining 65 acres was assessed as excess land;

3) the building's physical condition/age was considered in the assessment with a 40% depreciation and a 5% economic obsolescence to the building to account for higher than normal traffic count; and

(4) the Property's land value and per-usable, square-foot price were well within the range of comparable sales.

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. 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 correct assessment should be \$125,600. This assessment is arrived at by depreciating the building by an additional 10% to reflect the interior physical deficiencies of the Property.

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Based on the photographic evidence, the board concluded the Town did not adequately reflect the building's deficiencies. The board concluded no adjustment was required to the land assessment because the Town adequately supported the assessment. The board found no further adjustments are 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 \$125,600 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

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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

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Walter R. Dyar, Taxpayer; and Chairman, Selectmen of Gorham.

Dated: April 7, 1994

Lynn M. Wheeler, Deputy Clerk

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