

Leo G. and Bettina V. Howe

v.

Town of Milton

Docket No.: 11307-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$98,600 (land \$33,600; buildings \$65,000) on a 3.83-acre lot with a house (the Property). The Taxpayers also own, but did not appeal, a vacant lot in the Town assessed at \$20,800. 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 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 their burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the Property is wet and swampy and abuts a working railroad;

- (2) a sewer access constructed across the street was never tied in, which detracts from the Property's value; and
- (3) an appraiser estimated a \$79,000 value on April 1, 1991.

The Town argued the assessment was proper because:

- (1) the assessment was within the range of average property assessments in the Town;
- (2) the Taxpayers' appraisal was flawed because of inaccurate data and estimates; and
- (3) the appraiser's comparables were not comparable in location, size, or in extra features.

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 proper assessment should be \$81,050 (land \$33,600; buildings \$47,450). The inspector adjusted the building value because of the cathedral ceilings, and also made an adjustment to address the Property's location. 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 correct assessment should be \$96,100 (land, \$31,100; building, \$65,000). This assessment is ordered because the board concluded the Town should have reduced the land assessment by 10% to reflect the market drawbacks of the land, including the railroad tracks and the access. The revised assessment points to an \$85,800 equalized

value ( $\$96,100 \div 1.12$ , which is the equalization ratio). This equalized value is in line with the comparables and the Taxpayers' appraisal's \$97,854 cost approach. Additionally, this revised assessment is in line with the Taxpayers' appraisal's sales comparison approach when the comparison grid is revised on the age line. The appraiser made a \$5,000 adjustment to all the comparables because the Property is two years old. The board concluded such an adjustment was excessive given the Property's age and condition. With an adjustment to the age line, the comparables would range between \$84,800 and \$79,800, allowing a \$2,000 adjustment for the difference in age. Thus, the equalized value is within the range of both the cost approach and the comparable sale approach.

If the taxes have been paid, the amount paid on the value in excess of \$96,100 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Leo G. and Bettina V. Howe, Taxpayers; and Chairman, Selectmen of Milton.

Dated: May 31, 1994

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Lynn M. Wheeler, Deputy Clerk