

Nida Gould/GSK Family Assoc.

v.

Town of Milton

Docket No.: 11309-91-PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 adjusted assessment of \$94,500 (land \$61,100; buildings \$33,400) on a .12-acre lot with a cottage (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 and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the chimney is cracked and both the chimney and the bathroom sag because the cottage was constructed on telephone poles and crossarms;
- (2) Branch River Road crosses the lot and this road is in disrepair;

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- (3) the roof leaks and needs replacing, and the cottage is seasonal only and has no insulation;
- (4) the Property actually fronts on Branch River before it empties into Northeast Pond;
- (5) the Property was listed from December 1986 to March 1988 for \$99,000 with no buyers; and
- (6) neighboring mobile homes and the river's location negatively affect the Property's value.

The Town argued the assessment was proper because:

- (1) the assessment was already reduced to address the Town road that crosses the lot; and
- (2) the same methodology was used throughout the Town.

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 \$86,200 (land \$52,800; buildings \$33,400). The inspector adjusted the land assessment to address the power lines and the right-of-way. 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 should be

\$81,200. This assessment is ordered for the following reasons.

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1) Normally, the town is entitled to a presumption that the assessment is correct. Therefore, the taxpayer normally has the burden of proof. The town is entitled to this presumption of correctness because it is assumed that the town has complied with RSA 75:1, which requires towns to base assessments on market data, and RSA 75:8, which requires towns to review assessments and to adjust assessments based on changes in the market. In this case, we question whether the Town is entitled to that presumption of correctness. First, the Town did not provide the board with any back up data or analysis to support the calculations on the assessment card. Second, the board was unable to decipher the land calculation on the assessment card, e.g., the frontage calculations. Clearly, $140 \times \$900 \times .50$ does not equal \$37,400. This frontage calculation also has not worked on the other Town tax cards that the board has reviewed in other appeals. While assumptions are dangerous, it is the board's assumption, based on its knowledge and review of many assessment methodologies and property-record cards, that a separate factor was applied for the lot's frontage relative to some standard frontage amount. However, the basis for that factor was not presented or described by the Town. These problems, and the board's lack of confidence in the assessment cards, lead the board to question whether the Town is entitled to the normal presumption of correctness. The board has, nonetheless, decided this case solely based on the evidence, and our concerns about the Town's assessing practices has entered into our determination of what weight to give the Town evidence.

Specifically, because of these problems, the board has given little weight to the Town's assessment analysis and its discussion of the Taxpayer's evidence.

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2) The board inspector calculated an \$86,200 assessment, and he adjusted the land assessment due to the right-of-way.

3) The board attempted to recalculate the assessment as follows.

Basic site	.23 Ac x \$70,000 * =	\$16,100	
Frontage (from card)			\$37,400
			\$53,500
ROW adj. (-20%)			<u>.8</u>
			\$42,800
Water and septic			<u>5,000</u>
Total land			\$47,800
Building			<u>\$33,400</u>
Total assessment			\$81,200

* See Lamb v. Milton, Docket No. 11059-91-PT for \$70,000 figure, which was Town's per-acre value on a .23-acre lot.

Note: The Town argued no right-of-way adjustment was required because the Town only used a lot size of .12 acre and not the .23 actual. What the Town failed to mention was it used the .12 size with a \$155,835 per-acre figure. While in Lamb for a .23 acre lot, the Town used a \$70,000 per-acre figure. In other words, the smaller lot size figure was meaningless because the Town significantly increases the per-acre figure. Again, while the assumption of a one acre base figure may be an incorrect one, the Town did not provide any explanation as to the negligible difference in value between this lot and the Lamb lot. The board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b); see also Petition of Grimm, 138 N.H. 42, 53 (1993)

(administrative board may use expertise and experience to evaluate evidence).

If the taxes have been paid, the amount paid on the value in excess of \$81,200 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

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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

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard W. Shapleigh, Sr., Agent for Nida Gould, Taxpayer; and the Chairman, Selectmen of Milton.

Dated: October 7, 1994

Lynn M. Wheeler, Deputy Clerk

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