

Scott P. and Carolyn A. Ellison

v.

Town of New London

Docket No.: 11365-91-PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$121,900 (land \$51,600; buildings \$70,300) on a 1.3-acre lot with a house (the Property). 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 was purchased in July 1991, for \$95,000, the Property's asking price was \$115,000, and the Property had been listed for two years at \$129,000;

Page 2

Ellison v. Town of New London

Docket No.: 11365-91-PT

- (2) the Property has wetlands from poor drainage off Gould Road, and the house has an unfinished basement, no attic space, and no garage;
- (3) a June 1991 bank appraisal estimated a \$100,000 value;
- (4) the Property is surrounded on three sides by commercial zoning;
- (5) the abutting commercial property received planning board approval in October 1992 to enlarge its parking lot, which further detracts from the Property's value; and
- (6) the assessment should be \$95,000.

The Town reviewed the Property's assessment both in 1991 and 1992 to address the Taxpayers' concerns relative to wetlands and the abutting commercial property. The Town recommended reducing the assessment to \$112,500 for tax year 1992. The Town argued the 1991 assessment was proper because:

- (1) the Town reviewed all factors in calculating the assessment, and the assessment was supported by comparable properties;
- (2) the abutting commercial lot existed when the Taxpayers purchased the Property; and
- (3) a comparable property sold in September 1992 for \$110,000.

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 Town's adjusted, 1992 assessment should also be applied to tax year 1991. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would

Page 3
Ellison v. Town of New London
Docket No.: 11365-91-PT

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 upon the report.

Board's Rulings

Based on the evidence, the board finds the correct assessment should be \$104,000. This assessment is ordered for the following reasons.

(1) The Taxpayers purchased the Property in July 1991 for \$95,000. The evidence indicated that the sale was an arms-length fair market value sale. The board's paralegal called the Taxpayers and was told the sale was arms-length, had been advertised for a reasonable period of time and was purchased through a realtor. The Taxpayers followed up this conversation with a letter, which was copied to the Town by the board. Where it is demonstrated that a sale was an arms-length sale, the sales price is one of the "best indicators of the property's value." Appeal of Lakeshore Estate, 130 N.H. 504, 508 (1988).

(2) The ordered assessment is supported by the \$100,000 appraisal, which included a comparable near the Property. The board decided comparable 1 was a good indicator of value and was consistent with the Taxpayer's purchase price.

The board multiplied the \$101,800 of comparable 1 by 1.01 for a time adjustment and by 1.01 for the equalization ratio to arrive at the assessment.

If the taxes have been paid, the amount paid on the value in excess of \$104,000 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

Page 4
Ellison v. Town of New London
Docket No.: 11365-91-PT

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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Page 5
Ellison v. Town of New London
Docket No.: 11365-91-PT

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Scott P. and Carolyn A. Ellison, Taxpayers; and the Chairman, Selectmen of New London.

Dated: September 20, 1994

0009

Lynn M. Wheeler, Deputy Clerk

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Docket No.: 11365-91-PT

ORDER

This order responds to the "Town's" September 27, 1994 motion for clarification. In its September 20, 1994 decision, the board did not allocate the value between land and building. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214,

217 (1985). However, the existing assessment process allocates the total value between land value and building value, and the Town shall make this allocation in accordance with its assessing practices.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Page 2
Ellison v. Town of New London
Docket No.: 11365-91-PT

CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Scott P. and Carolyn A. Ellison, Taxpayers; and the Chairman, Selectmen of New London.

Dated: October 13, 1994

Lynn M. Wheeler, Deputy Clerk