

**Dennis and Joella Lapham**

**v.**

**Town of Newfields**

**Docket No.: 11397-91PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$199,750 (land, \$72,250; buildings, \$127,500) on a 10.1-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 this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the upstairs and the basement were incomplete, the main floor contains only stud walls, and the Property has no heat, lighting, plumbing or water;
- (2) the Property fronts on a gravel road and has 3 to 4 acres of swampland, 1

acre of wetlands due to water runoff, and the remaining acreage is ledge;

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(3) the building cost only \$55,521 to build in 1990 and the building value almost doubled in one year's time, yet the Town never inspected the building's interior to verify its incomplete condition;

(4) the land went from \$24,250 to its present assessment in three year's time;

(5) comparable homes at 100% complete were assessed Class 3 to 3.5 and \$45.10 to \$50.55 per-square-foot, yet the Property, still under construction, was assessed Class 4 at \$68.20 per-square-foot;

(6) the comparables have frontage on Town-paved roads and were assessed a \$300, per-front-foot price, yet the Property has only 100' frontage on a gravel road and was assessed the same;

(7) the comparables are equal to the Property in construction quality, but the Property is new when both comparables are at least 15 years old; and

(8) the only information provided to the Town was the inventory form and the Town never explained the assessment process.

The Town argued the assessment was proper because:

(1) the Taxpayers' comparables were assessed equitably with the Property;

(2) the building was assessed as Class 4 because it is overbuilt for the area, but the construction quality warrants a Class 4.5 assessment;

(3) the assessment reflected the building's completion stage based on information provided by the Taxpayers; and

(4) the assessment process was repeatedly explained to the Taxpayers.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$133,350 (land, \$72,250; buildings, \$61,100).

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This abatement is ordered because:

- 1) based on the evidence, the house was incomplete as of April 1, 1991, with it only being a shell with a chimney and roughed-in plumbing and wiring;
- 2) the Town's grade-four classification is proper based on the photographic and descriptive evidence submitted by the parties;
- 3) the Town's replacement cost new before depreciation in 1991 of \$90,550 is a reasonable estimate of the value of the house, as if complete; and
- 4) the replacement cost new should be reduced by 55% to reflect its unfinished status as of April 1, 1991, resulting in a building value of \$61,100.

No further abatement is warranted because:

- 1) the house site, as assessed by the Town, is reasonable given the legal use of the Property and the 10% adjustment for the long access from Old Lee Road;
- 2) the Taxpayers stated that the lot had been made buildable by a subdivision in 1981 when two tenths of an acre was annexed to the rear portion to provide access to Old Lee Road; and
- 3) the increase in the land assessment from \$24,250 in 1987 to \$72,250 in 1991 was primarily due to the building of the house and development of the site; the Town had most likely underassessed the Property for several years since the rear lot was assessed only as rear land rather than as an undeveloped home site.

If the taxes have been paid, the amount paid on the value in excess of \$133,350 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

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Paul B. Franklin, Member

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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 Dennis and Joella Lapham, Taxpayers; and the Chairman, Selectmen of Newfields.

Dated: April 19, 1994

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Lynn M. Wheeler, Deputy Clerk

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