

Jean J. & Donna J. Michaud

v.

Town of Milan

Docket No.: 11430-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$101,700 (land \$11,050; buildings \$90,650) on a 2-story home on a 9.04-acre lot (the Property). 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 Property was purchased in June 1990 for \$200,000;
- (2) a September 1992 appraisal estimated a \$200,000 value;
- (3) the reassessment firm valued the Property at \$195,200 in 1992; and
- (4) a fair assessed value would be \$81,344 based on an average of the above values equalized by the ratio of 45% for the 1991 tax year.

The Town argued the assessment was proper because:

- (1) at the time of the application, the Town was in the process of a revaluation for 1992 and used sales from 1989, 1990 and 1991;
- (2) the application was turned down in fairness to the other taxpayers in the Town;
- (3) the Property was the nicest and most expensive property in Town in 1991; and
- (4) the seller was under duress (threat of foreclosure) and the Town questioned whether the sale price of \$200,000 was fair market value.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$94,500, which equates to a \$210,000 equalized value ($\$94,500 \div .48$, the department of revenue administration's ratio). This assessment is ordered for the following reasons.

1) The Taxpayers purchased the Property in 1990 for \$200,000. Based on the change in the ratio from 1990 to 1991, values in the Town dropped by approximately 3/4% per month, requiring a downward adjustment of the 1990 sale of -7.5% (10 months x 3/4%) resulting in a \$193,000 time-adjusted value. The Town stated the sale was not a market-value sale because the seller was in the process of being foreclosed upon. Additionally, the Taxpayers told the board the sales price did not include any broker's fee. Thus, we gave some weight to the 1990 sale but not ultimate weight.

2) The Taxpayers' appraisal estimated a \$200,000 September 1992 value. This value needed to be adjusted upward because based on the ratio changes of surrounding towns (Berlin and Littleton) property values continued to fall but Page 3
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at a slower rate between 1991 and 1992. Thus, if the \$200,000 appraisal is adjusted by 6% (the ratio change in Berlin) the time-adjusted appraisal would be \$212,000.

3) The Town underwent a revaluation in 1992, and the Property was newly assessed at \$195,000. This value would have to be time-adjusted back to 1991, and we again use the 6%, resulting in a value of \$206,700.

If the taxes have been paid, the amount paid on the value in excess of \$94,500 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. This decision only applies to 1991 because the Town was revalued in 1992.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing 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 rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Jean J. & Donna J. Michaud, Taxpayers; and Chairman, Board of Selectmen of Milan.

Dated: June 14, 1995

Valerie B. Lanigan, Clerk

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