

Wayne J. and Ruth M. Thompson

v.

Town of Lyme

Docket No.: 12164-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$108,800 (land \$42,500; buildings \$66,300) on a 1.93-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 Property would need a variance if any expansion were done because of current zoning and setback requirements in the Town;
- (2) an April, 1991 appraisal estimated a \$78,000 value;

(3) the Property has the highest per-square-foot values for the first floor when compared to 10 other comparables both smaller and larger than the Property;

(4) larger homes have lower tax rates, and larger ranch homes have lower first-floor values; and

(5) there is no market for ranch homes.

The Town argued the assessment was proper because:

(1) different style homes have different base rates and the Taxpayers compared their ranch home to capes and colonials;

(2) the Taxpayers compared their 2,085 square-foot ranch to a 5,600 square-foot antique colonial and a 3,400 square-foot cape;

(3) the base rates were established using sales of similar properties during the revaluation; and

(4) the Property's prices for per-usable-square foot, effective area, and per-square foot of land were well within the range of comparable properties.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$94,900 (land \$42,500; building \$52,400). This assessment was calculated by reducing the base building rate by 10% because the board concludes the Property is a below-average building. The resulting building value was then reduced by 25% for physical and functional depreciation -- the board having concluded the -13% depreciation used by the Town was insufficient. Finally, the resulting equalized value -- \$91,250 -- seems more in line with the board's judgment and is more in line with Taxpayers' appraiser's cost approach.

If the taxes have been paid, the amount paid on the value in excess of \$94,900 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

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 Wayne J. and Ruth M. Thompson, Taxpayers; and Chairman, Selectmen of Lyme.

Dated: April 19, 1994

Lynn M. Wheeler, Deputy Clerk

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