

**E. John Lownes, III**

**v.**

**Town of Dalton**

**Docket No.: 12171-91PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$440,550 (land \$218,550; buildings \$222,000) on a 9.57-acre lot with a house (the Property). 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.

**Taxpayer's Arguments**

The Taxpayer argued the assessment was excessive because:

- (1) the amenities value associated with belonging to the Dalton Homeowner's Association were overvalued and a fair amenity value is \$10,000;
- (2) the house was overvalued;
- (3) there was a pattern of inconsistent assessments in the Town;
- (4) comparable sales indicated overassessment; and

(5) a proportional assessment would be \$192,400.

The Taxpayer submitted a detailed 14-page letter, which will not be reiterated in this decision.

### **Town's Arguments**

The Town argued the assessment was proper because:

- (1) the finish in the house was notably better than other properties in the development;
- (2) there was no community or development in Dalton as extensive or desirable as Dalton Ridge;
- (3) the restrictions imposed by the Dalton Homeowner's Association in effect serve as private zoning which enhances the value of the Property;
- (4) two arm's-length sales in the subdivision occurred during the revaluation which were used to set the values at Dalton Ridge; and
- (5) the Town recommended a 25% reduction consistent with the board's prior order in Thayer v. Dalton, docket no. 7431-89.

The board's inspector inspected the property, reviewed the property-assessment card, reviewed the file and exhibits, and he filed a report with the board (A copy of the report was mailed to the parties for their comments.). This report concluded an abatement was warranted.

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 and the inspector's report, we find the correct assessment should be \$291,200. The board has not allocated the value between land and buildings, and the Town shall make this allocation in accordance with its assessing practices.

The board spent a considerable amount of time reviewing all of the information and documentation submitted to the board, including the appraisals, the comparables, and Mr. Bartlett's report. It would be impossible, and it is unnecessary, for the board to repeat every aspect of its review. Suffice it to say, that after careful consideration of all the information, the board concluded that Mr. Bartlett's report was the best evidence of value presented to the board.

The board did not find the Taxpayer's arguments concerning overassessment as persuasive as Mr. Bartlett's experienced and professional appraisal report. Therefore, we have accepted Mr. Bartlett's report rather than the Taxpayer's arguments.

If the taxes have been paid, the amount paid on the value in excess of \$291,200 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 TAX 203.05, the Town shall also refund any overpayment for 1992, 1993 and 1994. 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 "rehearing motion") of this decision must be filed within thirty (30) days of Page 4

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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 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

#### Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to E. John Lownes, III, Taxpayer; Walter Mitchell, Esquire, counsel for the Town of Dalton and Chairman, Selectmen of Dalton.

Dated: March 17, 1995

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Valerie B. Lanigan, Clerk

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