

Frederick C. and Irene D. Gernhard

v.

Town of Lyme

Docket No.: 12181-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of:

\$48,500 (land \$39,800; buildings \$8,700) on Lot 40, a 14,375, square-foot lot with a mobile home; and

\$140,300 (land \$77,300; buildings \$63,000) on Lot 48, a 10.70-acre lot with a house (the Properties).

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 abatements is granted.

The Taxpayers have the burden of showing the assessments were 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.

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The Taxpayers argued the assessment on Lot 40 was excessive because:

- (1) the roof leaks, resulting in ceiling damage, and the kitchen floor is peeled;
- (2) one of the Property's sheds protects the water heater, pump and oil tank from weather;
- (3) the Property was purchased in 1986 for \$10,000;
- (4) an April, 1992 appraisal estimated a \$41,000 value;
- (5) the Property has a higher, per-unit price than comparable properties, and there are no recreational facilities in the neighborhood;
- (6) the Town's comparables were not mobile homes;
- (7) smaller properties pay higher taxes, e.g., a 1.6-acre lot in the neighborhood was assessed at only \$4,800; and
- (8) the assessment should be \$20,000 to \$25,000.

The Taxpayers argued the assessment on Lot 48 was excessive because:

- (1) the Property has inferior construction and there is no "workshop," only a workbench in the garage;
- (2) the Property has a split entry and should be assessed as a raised ranch instead of a ranch;
- (3) an April, 1992 appraisal estimated a \$118,000 value;
- (4) the Property has a higher, per-unit price than comparable properties;
- (5) the Town's comparables were not ranch homes, and there are more desirable locations in the Town; and
- (6) the assessment should be \$118,000.

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The Town argued the assessment on Lot 40 was proper because:

- (1) despite the Property's good condition considering its age, it was given a higher depreciation;
- (2) the Property is located in a scenic area in an above-average part of Town and is close to recreational facilities;
- (3) the mobile home was assessed consistently with other mobile homes in the Town, i.e., after an on-site inspection; 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.

The Town argued the assessment on Lot 48 was proper because:

- (1) the Property is in a desirable location;
- (2) the Property has scenic views, yet the assessment was depreciated to address view restrictions; and
- (3) comparable properties support the Property's assessment.

Board's Rulings

Based on the evidence, the board finds the proper assessments to be: \$43,650 on Lot 40 and \$126,250 on Lot 48.

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

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building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.)

These assessments are ordered because:

- (1) the Taxpayers submitted appraisals for both Properties, which is evidence of market value;
- (2) the physical condition of the mobile home and the functional obsolescence of the house due to its construction history and layout warrant greater depreciation than that given by the Town; and
- (3) based on the above findings, a 10% market adjustment is applied to the total assessment for each Property.

The Town failed to submit any sales to support the assessments. Since the Town was recently revalued, the Town should have submitted sales for the board's consideration. RSA 75:1 requires that assessments be in line with market value. Therefore, providing sales is essential for the board to compare the Properties' assessments with fair market value and the general level of assessment in the municipality. See Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986).

In order to provide the board with the most complete evidence, the Town should have provided sales as indicated above or commented on the Taxpayers' appraisals. Lacking any rebuttal by the Town, the board, after reviewing the appraisals to ensure there are no overt errors or inappropriate adjustments, gives weight to such appraisals as evidence of market value. The assessment

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analysis performed by the Town, while helpful, does not indicate the Properties are assessed relative to the market -- only relative to other similar properties.

If the taxes have been paid, the amount paid on the value in excess of \$43,650 on Lot 40 and \$126,250 on Lot 48 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Frederick C. and Irene D. Gernhard, Taxpayers; and Chairman, Selectmen of Lyme.

Dated: 4/21/94

Lynn Wheeler, Deputy Clerk

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