

**Nicholas A. and Mary Frangos**

**v.**

**Town of Middleton**

**Docket Nos.: 9558-90PT and 12363-91PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessment of \$118,250 (land \$70,400; buildings \$47,850) on a .14-acre lot with a camp (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 seasonal camp is on a postage-size lot and cannot be expanded or converted to year-round use;
- (2) the fixtures are low quality, the house needs renovations including a new roof, and the well water is not drinkable;
- (3) an appraisal performed by Katherine Johnston of Crafts Appraisal estimated the fair market value as of January, 1991 to be \$85,000;

- (4) sales on Hampshire Shores support overassessment of the subject; and
- (5) a reasonable assessment is in the \$70,000 range.

The Town argued the assessment was proper because:

- (1) the Taxpayers' comparables were not all arms-length transactions;
- (2) the Taxpayers' appraisal utilized three comparables -- the quality of construction adjustment on #1 was not supported, #2 was a divorce sale, and #3 was a bank sale and the appraiser made no adjustments to these sales;
- (3) the assessment was based on sales utilized during 1987 to 1992 and the Town correlated the sales and arrived at a front-foot value of \$800;
- (4) the land values were consistent with all other site values on the point and the double lots were assessed higher; and
- (5) comparable sales support the assessment.

#### Board's Rulings

Based on the evidence, we find the correct assessment should be \$113,350 (land \$70,400; building \$42,950). This assessment is ordered because the board finds that based on the age and condition of the cottage, an appropriate depreciation is 17%. The board finds no further adjustments are warranted. The board was not convinced by the Taxpayers' January 1991 appraisal because it utilized at least two sales which were of questionable arms-length nature (bank sale, divorce sale) without commenting on either, and failed to substantiate with market data any of the adjustments made to the comparables. The Taxpayers' evidence of comparable sales, which occurred in Hampshire Shores, were not verified to determine whether they were arms-length transactions and were not adjusted for differences in time, size and condition of the buildings, size and topography of the land, etc. Further, the

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evidence of the questionable arms-length nature of many of the sales left too many questions unanswered for the board to consider the sales. The board finds the Town supported its assertion that the land value was in line with all other assessments and that double lots were assessed higher than single lots.

If the taxes have been paid, the amount paid on the value in excess of \$113,350 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1991, 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 "rehearing 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 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
George Twigg, III, Chairman

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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 Nicholas A. and Mary Frangos, Taxpayers; Mary E. Pinkham-Langer, Agent for the Town of Middleton; and Chairman, Selectmen of Middleton.

Dated:

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Valerie B. Lanigan, Clerk

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