

Kenneth M. and Shirley A. Varney

v.

Town of Milton

Docket No.: 12388-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$65,700 (land \$28,900; buildings \$36,800) on a .30-acre lot with a house (the Property). The Taxpayers also own, but did not appeal, a camp assessed at \$16,800 on land owned by another. 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 their burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the house has inferior construction, the roof needs repairs, and the

interior walls are covered only with wallboard and cellotex;

(2) the house has no central heating system and there is no well on the Property;

(3) the house sits close to Route 125 and the land is less than 1/3 of an acre;

(4) the house sits on partial slab, which is undermined; and

(5) the entire Property would sell for only \$23,900.

The Town was failed to submit any arguments to support the assessment and was finally defaulted.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$56,000. This decision is based on the board's judgment and expertise that this Property would have had a \$50,000 1991 market value. The \$50,000 market value was then increased by 12% (the department of revenue administration's equalization ratio) resulting in the \$56,000 assessment ($\$50,000 \times 1.12 = \$56,000$). Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

The board has not made any specific adjustments to the property-record card, but leaves the Town to make adjustments consistent with this decision. Those adjustments could include increasing the depreciation on the house and

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providing some adjustment to the land value given the poor quality of the house on the land.

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

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Kenneth M. and Shirley A. Varney, Taxpayers; and Chairman, Selectmen of Milton.

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Dated: June 30, 1994

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Lynn M. Wheeler, Deputy Clerk