

**Maurice M. and Joanne Tanguay**

**v.**

**Town of Gorham**

**Docket No.: 12444-91PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$88,400 (land, \$13,200; buildings \$75,200) on a 9,240 square-foot lot with a house (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) two neighboring properties received greater relative abatements than the Taxpayers' Property;
- (2) no property on the street has sold for what the Property is assessed for and most properties are valued in the \$60,000 to \$70,000 range;
- (3) the lot is smaller than the adjoining properties and has no back yard;

(4) the Town's comparables are generally in better neighborhoods with higher values;

(5) the appraiser, during his review of the request for abatement never entered the building; thus, the basis for the abatement is unknown; and

(6) two family conversions were assessed less than single family residences.

The Town argued the assessment was proper because:

(1) an analysis of comparable single-family properties in the general neighborhood indicates the Property is proportionately assessed; and

(2) two-family conversions received an economic adjustment while single-family homes did not because two-family homes were generally selling for less than single-family homes.

#### Board's Rulings

Based on the evidence, we find the correct assessment should be \$81,100 (land, \$11,900; buildings, \$69,200). This assessment is ordered because:

1) the board finds that due to the lack of any back yard and the configuration of the lot and placement of the buildings, the buildings' depreciation should be increased by 5% and the land condition factor should be decreased by 10%; and

2) the garage effective area should be calculated as 25% rather than 30% of the effective base rate for living area to account for the reduced cost and reduced utility of its flat roof.

The board finds that while there was no market evidence submitted by either party (due to the lack of comparable sales within a reasonable time Page 3

period) the configuration and utility of the lot and the flat roof of the garage are factors that would be commonly recognized in the market place and should be adjusted for by the Town. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) (The Town must consider all relevant factors in arriving at a proper assessment).

If the taxes have been paid, the amount paid on the value in excess of \$81,100 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 "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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Maurice M. and Joanne Tanguay, Taxpayers; and the Chairman, Selectmen of Gorham.

Dated: August 5, 1994

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Valerie B. Lanigan, Clerk