

**Aline J. and Robert M. Kelly**

**v.**

**Town of Litchfield**

**Docket No.: 12773-92-PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$127,900 (land, \$55,800; building, \$72,100) on 1.320 acres with a building (the Property). 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 denied.

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 failed to carry this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) the Property was purchased on March 16, 1992 for \$99,900; and
- 2) an abatement of \$1,129.48 should be given as there was no tax liability prior to March 16, 1992.

Page 2

Kelly v. Town of Litchfield

Docket No.: 12773-92-PT

The Town argued the assessment was proper because:

- 1) the Property was purchased in March 1992 for \$99,900 and was considered by the Town and the DRA in their ratio analysis as an arms-length transaction;
- 2) the Property was assessed as of April 1, 1992 for a total of \$127,900 (land, \$55,800; building, \$72,100 (85% complete));
- 3) it was discovered that the house was completed in March 1992 and should have been assessed at \$84,800 for a 100% total completed value of \$140,600, yet, no correction was made;
- 4) any prorating should have been handled by the realtor as part of the purchase and sale agreement and is not a reason for an abatement;
- 5) equalizing the March 1992 sale by the ratio resulted in an equitable value \$140,600;
- 6) all similar residential properties were assessed in the same manner using the same methodology determined through the sales analysis of all property in Town; and
- 7) the abatement request should be denied and the Town requested the 1992 value be corrected to \$140,600 and the Taxpayers be ordered to pay the additional tax of \$273,94.

#### Board Findings

The board finds that the subject property was 100% complete (not 85%), as of April 1, 1992 and therefore should have been assessed for \$140,600. The 1992 assessment under appeal of \$127,900 is therefore

Page 3

Kelly v. Town of Litchfield

Docket No.: 12773-92-PT

disproportionately low and constitutes an underassessment of the subject property. The board orders that the correct assessment of \$140,600 be used for 1992, the tax year under appeal. When it comes to the attention of the board from any source. . . that a particular parcel of real estate has not been assessed or has been unequally assessed, the board may order a reassessment. RSA 71-B:16 II.

The Town shall issue a new 1992 tax bill for an assessed value of \$140,600, indicating a credit for any payment (if made), based on the previous tax bill on an assessed value of \$127,900.

The Taxpayers expressed the opinion that taxes should have been prorated by the Town. There is no statutory provision for the proration of taxes for this type of property; any proration should have been addressed by the buyer and seller at the closing.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within thirty (30) 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

Page 4  
Kelly v. Town of Litchfield  
Docket No.: 12773-92-PT

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

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George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert M. and Aline J. Kelly, Taxpayers; and the Chairman, Selectmen of Litchfield.

Dated: January 12, 1995

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Melanie J. Ekstrom, Deputy Clerk