

Richard I. and Verna P. Hall

v.

Town of Hollis

Docket No.: 12859-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$279,200 (land \$111,400; buildings \$167,800) on a 4.16-acre lot with a house (the Property). The Taxpayers also own, but did not appeal, a 1/10th interest in a vacant, 32-acre lot in current use. 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 assessment included land not owned by the Taxpayers, i.e., Lot 22A, a

.176-acre lot with 52 feet of lake frontage;

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(2) the land was purchased in 1980 for only \$31,500, and the building was constructed in 1986 for only \$125,000;

(3) the assessment was based on incorrect measurements, and the Town assessed \$600 for a portable shed;

(4) the assessment included a surcharge for lake frontage in the recreational zone, but the Town did not assess the surcharge rates consistently and some lots were not assessed the surcharge at all;

(5) the Town assessed a neighboring lot as residential, but the lot contains a commercial business;

(6) a neighboring lot with two houses, a recreational hall and 10 rental cottages was assessed for only \$342,400;

(7) larger, nicer homes have lower assessments; and

(8) a comparable property sold in September 1993 for \$110,000.

The Town argued the assessment was proper because:

(1) the Property's interior was graded 4.5 for construction quality;

(2) the Property is on Silver Lake and has a private beach;

(3) all lakefront lots with recreational waters were assessed the surcharge;

and

(4) recent comparable sales support the Property's assessment.

Board's Rulings

Based on the evidence, the board finds the correct assessment to be \$253,140 (land \$109,500; buildings \$143,640).

The board is required to view appeals and use its judgment in arriving

at a proper result. See RSA 71-B:5; see also Appeal of Sokolow, 137 N.H. 642

(1993). Furthermore, the supreme court has stated that in arriving at a
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determination of value "judgment is the touchstone." Southern New Hampshire
Water Co., Inc. v. Town of Hudson, N.H., slip op. at 2 (November 7, 1994).

Based on the information provided and the board's judgment, the Town erred by
not applying sufficient functional depreciation given the type of house
involved. This house is unique and would have a limited market appeal. It is
an earthen house with two sides covered by earth and with a flat earth-covered
roof. In addition to these unique features, it is an unusual house for a
waterfront property. Thus, while we do not disagree with the Town's 4½ grade,
which the Taxpayers did not dispute by providing interior photographs, we do
find that at a minimum a -20% functional depreciation should have been given
to address the Property's limiting market factors.

The board's recalculations are as follows:

house	\$125,532 x .95 (physical) x .80 (functional) =	\$95,405
shed		615
garage	rounded	<u>10,377</u>
	subtotal	\$106,400
	multiplier	<u>1.35</u>
	total	\$143,640
adjusted land		\$109,500
adjusted building		<u>143,640</u>
		\$253,140

We have also corrected the acreage and frontage as the Town did in 1993.

While the Taxpayers raised several other arguments, none of them warrant
any additional adjustment because the Taxpayers did not indicate how their
complaints equated to overassessment. Finally, this decision does not apply
retrospectively because the board is not authorized to issue orders for past

years in these appeals. This means the board cannot abate any taxes for the years the Taxpayers asserted they were assessed for land that was not theirs.

If the taxes have been paid, the amount paid on the value in excess of

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\$253,140 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 1993 and 1994. 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 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 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

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard I. and Verna P. Hall, Taxpayers; and Chairman, Selectmen of Hollis.

Dated: January 18, 1995

Lynn M. Wheeler, Deputy Clerk

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