

Richard D. De Stefani

v.

Town of Auburn

Docket No.: 12864-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$231,100 (land, \$61,100; building, \$170,000) consisting of a dwelling on a 1.06 acre lot (the Property). The Taxpayer 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 Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- 1) the Property was purchased as a "builder's close out" in November, 1991 for \$175,000 after being on the market for almost two years;
- 2) comparable sales indicate the Property is overassessed; and

3) an appraisal dated September 23, 1991 estimated a fair market value of \$200,000.

In Taxpayer's rebuttal, he stated the Town erred in the quality of the Property, the square footage and the gross living area adjustment.

The Town argued the assessment was proper because:

- 1) when reconstructing the cost and market approaches, it indicated a value of \$231,100;
- 2) Taxpayer's comparables are acceptable except for #1 as it was not a valid sale;
- 3) there are differences between the Town's and Taxpayer's appraisal, i.e., living area, square feet and quality; and
- 4) Taxpayer's assessment for 1992 was fair and therefore the abatement request should be denied.

The Town, after reading Taxpayer's brief and rebuttal, scheduled an appointment to revisit the Property. After reinspecting the Property, the Town recommended a revised assessment of \$219,800 achieved by lowering the quality factor and correcting for the unfinished attic and lack of air conditioning.

Board Findings

Based on the evidence, we find the correct assessment should be \$216,650 (land, \$61,100; building, \$155,550). This assessment is ordered because:

- 1) the Town's lowering of the quality grade and other corrections is supported by the Taxpayer's evidence including the photographs; and

2) the physical depreciation should be increased to 3% to account for the several workmanship problems stated by the Taxpayer.

No further abatement is warranted because:

1) the board was unable to place full weight on the Taxpayer's appraisal as only a single page of it was submitted, the purpose of the appraisal was unstated and the Property's general description and explanation of adjustments were lacking; and

2) the ordered assessment of \$216,650 approaches the Taxpayer's appraisal's cost approach (\$209,947) and the upper end of the market approach (\$207,300); There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the Municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979)

If the taxes have been paid, the amount paid on the value in excess of \$216,650 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

Paul B. Franklin, Member

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard D. De Stefani, Taxpayer; and Chairman, Selectmen of Auburn.

Dated: January 27, 1995

Melanie J. Ekstrom, Deputy Clerk