

Gerard R. Dumont

v.

Town of Jaffrey

Docket No.: 12876-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$93,750 (land, \$9,950; building, \$83,800) on .10 acres with building (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 for \$74,000 in September, 1992;
- 2) an appraisal dated May, 1992, estimated a fair market value of \$86,000;
- 3) when applying the equalized ratio to the assessment, it represents an unrealistic value; and

4) when compared to large two-story homes, the building assessment is grossly overassessed.

The Town argued the assessment was proper because:

- 1) Taxpayer's building assessment is higher than the comparables submitted, however, that is due to the differences between them, i.e., square footage, class, condition, plumbing, depreciations given, etc.;
- 2) Taxpayer's comparable (74 River Street) is not a funeral home, but assessed as an apartment building and barn; and
- 3) Taxpayer's Property had been assessed in the same manner as other properties throughout the Town.

The board's inspector inspected the property, reviewed the property-assessment card, reviewed the parties' briefs and filed a report with the board. The inspector's report was sent out to the parties with additional time for the parties to comment if they wished. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation. In this case, the board accepts the inspector's recommendation.

Board Findings

Based on the evidence, we find the correct assessment should be \$83,450 (land \$9,950; buildings \$73,500). This assessment is ordered because:

- 1) the Town accounted for many of the functional obsolescence noted by Mr. Bartlett in his report but by grading the entire building as a class 4, it overvalued the first floor area which Mr. Bartlett qualified as only fair

to average; the functional depreciation should be increased to -35% to account for the quality difference;

2) the physical depreciation should be increased to 15% based on Mr. Bartlett's report;

3) the adjustment of the Taxpayer's appraisal as contained in Mr. Bartlett's report supports in a general fashion this revised assessment;

4) the Taxpayer's purchase of the Property in 1991 for \$73,000 was not fully reflective of market value based on all other evidence submitted; and

5) the indicated market value of \$100,550 derived by equalizing the assessment ($\$83,450 \div .83$) is supported by Mr. Bartlett's report and the Taxpayer's appraisal if proper adjustments are made.

If the taxes have been paid, the amount paid on the value in excess of \$83,450 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

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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

Paul B. Franklin, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Gerard R. Dumont, Taxpayer; and Chairman, Town of Jaffrey.

Dated: July 31, 1995

Melanie J. Ekstrom, Deputy Clerk

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