

Andrew and Ellen Dunbar

v.

Town of Peterborough

Docket No.: 13044-92 PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$104,400 on a house with a .18-acre lot (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 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) the land was assessed higher when compared to other larger lots;
- 2) the garage was overassessed given its condition and the assessment on another outbuilding;
- 3) the Town reduced the solar exemption (on a percentage basis); and

4) the assessment was not adjusted for the shared driveway.

The Town argued the assessment was proper because:

- 1) it was equitable based on a comparison of other assessments on comparable properties;
- 2) the revaluation analysis indicated lot size was of minor consequence in the sales;
- 3) the garage was assessed as a 2-car garage in very poor condition and the Taxpayers used a shed as a comparison;
- 4) the solar exemption was consistent with the Town's vote on these exemptions, i.e., based on value, and the earlier exemption was too high; and
- 5) the shared driveway was deemed to be a nonfactor.

Board Rulings

Based on the evidence, the board finds the proper assessment should be \$100,200 (land \$43,700; buildings \$56,500).

This assessment was arrived at as follows:

1) we reduced the land assessment by 5% due to the shared driveway, resulting in a land calculation of $\$50,000 \times .92$ (size adjustment) $\times .95$ (shared-driveway adjustment) = \$43,700; and

2) we reduced the building value by \$2,000 to reflect the poor condition of the garage.

These adjustments were made after careful review of the information provided to the board and after carefully considering the board's opinion as to whether these factors would affect value.

The two other issues raised by the Taxpayers -- the land assessment being comparatively higher than other land assessment and the solar exemption

issue -- do not warrant any further reduction. The Town in its brief adequately answered these issues. We find the Town's explanations to be valid, and therefore no further adjustment is warranted.

If the taxes have been paid, the amount paid on the value in excess of \$100,200 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.

Page 4
Dunbar v. Town of Peterborough
Docket No.: 13044-92PT

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Andrew & Ellen Dunbar, Taxpayers; and Chairman, Selectmen of Peterborough.

Dated: February 22, 1995

Melanie J. Ekstrom, Deputy Clerk

0006