

James and Vivian Sysyn

v.

Town of Candia

Docket No.: 13178-92-PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$180,200 (land, \$68,100; buildings, \$112,100) on a 7.29-acre lot with a house (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) an April 16, 1992 appraisal estimated a \$142,000 value;
- (2) the Property was never subject to any revaluation, as was the rest of the Town;

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(3) the house was built between 1983 and 1987 and, therefore, there is no real assessment history; and

(4) comparable properties in the appraisal support overassessment.

The Town argued the assessment was proper because:

(1) a comparable property sold on April 17, 1992 for \$162,000;

(2) the Taxpayers' appraisal was flawed because one of the comparables was in Auburn and two comparables sold in 1991;

(3) the appraisal's cost approach to value was \$165,772, which supports the Property's assessment;

(4) the same methodology was used throughout the Town for the 1991 revaluation -- the cost approach; and

(5) comparable properties support the assessment.

Board's Rulings

We find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

The Taxpayers submitted an April 1992 appraisal which they asked the board to rely on. The board was unable to rely on the appraisal because it did not include substantive information for the board to review the value opinion. Specifically:

1) the appraiser used a time adjustment of -.5% per month, but failed to show how the adjustment was determined (i.e. paired sales analysis);

2) an adjustment of \$20 per square foot of gross living area was utilized without any documentation as to how that figure was arrived at;

3) no adjustments were made to the comparables for the building's age (5 years vs. 23 years) or for location of the Property;

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4) there was no explanation for any of the adjustments made for acreage, room count, garage, porch, fireplace/hearth, appliances, central vacuum; the appraiser merely stated that adjustments were "considered typical of current market;"

5) the appraiser stated that the subject "falls in the higher range of values shown" however, the appraiser chose the adjusted value of comparable 2 as the final estimate of value. Comparable 2 is located in another town, was the median sale in the range of values, and required the most adjustments of the three comparables;

6) the appraiser determined a value by the cost approach and estimated a site value of \$46,500. He indicated that the land value was from "market extraction." Again, he offered no sales to support this value; and

7) the appraiser failed to verify any of the comparable sales with the buyer, seller or broker and stated "Sales data obtained from external viewing, city records, appraiser files, and local MLS. This data, though assumed accurate, is not guaranteed."

The Taxpayers' appraiser utilized Marshall and Swift Valuation Service in determining the subject's value based on the cost approach. The appraiser's indicated value of \$165,772 exceeds the Town's equalized value of the Property ($\$180,200 \div 1.16$ equalization ratio = \$155,345). Further, the Town submitted an April 1992 comparable sale which indicates the assessment is proper.

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

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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

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to James and Vivian Sysyn, Taxpayers; and the Chairman, Selectmen of Candia.

Dated: March 17, 1995

Lynn M. Wheeler, Deputy Clerk

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