Gary E. and Karen C. Phetteplace

v.

Town of Lyme

Docket Nos.: 12165-91PT, 13367-92PT and 13936-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of $202,700 (land $56,200; current use $500; buildings $146,000); 1992 assessment of $212,937 (land $56,200; current use $737; buildings $156,000); and 1993 assessment of $188,696 (land $56,200; current use $496; buildings $132,000) on an 18-acre lot containing 14.1 acres in current use and 3.9 acres with a house not in current use (the Property). For the reasons stated below, the appeal for abatements is granted to the Town's recommended assessments of $170,500 for 1991, $180,600 for 1992 and $180,596 for 1993.

The Taxpayers have the burden of showing the assessments were 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 assessments were excessive because:

(1) the Town has incorrectly assessed the barn as a garage; it does not have the same utility as a garage and a proper assessment would be $25,840;

(2) there is uncertainty in the title to the land; the title to the camp and the lot it was on did not rest with the seller and the Taxpayers have been unable to determine what fraction of the land goes with the camp;

(4) the house was not 70% complete on April 1, 1992;

(5) the land's view factor should be reduced to 115% to make it consistent with similar properties and the topography should be reduced to 80%; a further reduction should be made in the amount of $6,000 due to the title uncertainty; (6) the "camp" is only good for and should be assessed as storage; and

(7) the fair market value of the Property as of April 1, 1991 was $150,000, $150,000 as of April 1, 1992 and $155,000 as of April 1, 1993.

The Town argued the assessments were proper because:

(1) the garage/barn has a higher functional utility because it is attached to the house;

(2) the Town has applied 12% functional obsolescence due to the size and construction and 2% physical depreciation for a total contributory value of $49,290 which is appropriate for the garage/barn;

(3) many of the Taxpayers' barn comparables were either detached buildings or constructed over 100 years ago, built for animal shelter and storage of farm equipment and not comparable to the subject barn; the A. Wayne Pike property may have been improved after the Town's inspection and is subject to reinspection in the spring;

(4) the land was purchased in 1986 and the seller was anxious to sell the property;

(5) the Town had a complete revaluation in 1990 and used land sales which occurred from 1988 to 1990;

(6) the Taxpayers had to do extensive site work, cleared 4 to 5 acres of land, a driveway was added, water and septic were added and the market showed an increase in land values; and

(7) based on a review of the Property, the Town recommends assessments of $170,500 for 1991, $180,600 for 1992 and $180,596 for 1993.

Board's Rulings

Based on the evidence, the board finds the proper assessments to be those recommended by the Town as follows: 1991 - $170,500; 1992 - $180,600; 1993 - $180,596. The board finds the Town supported their recommended assessments and made adequate adjustments based on a January inspection of the Property. The board finds the recommended assessments are proper because:

(1) based on the evidence, the barn/garage has a higher functional utility because of its attachment to the house and therefore has a higher value than an older barn built for housing animals or farm equipment located some distance from the main structure;

(2) the Town's photographic evidence of the view and the factor assigned to the land is appropriate;

(3) the value assigned to the camp is appropriate based on its grandfathered use as a second dwelling; and

(4) the Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessments and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796

(1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

There was evidence indicating certain surrounding properties may have been underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., id.

The board denies the Taxpayers' request for costs because it did not find that the appeal was frivolously maintained or defended by the Town.

A motion for rehearing, reconsideration or clarification (collectively "rehearing 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 rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing 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 rehearing motion is a

prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

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 Gary E. and Karen C. Phetteplace, Taxpayers; and Chairman, Selectmen of Lyme.

Dated:April 11, 1995

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Valerie B. Lanigan, Clerk

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Gary E. & Karen C. Phetteplace

v.

Town of Lyme

Docket Nos. 12165-91PT, 13367-92PT & 13936-93PT

ORDER

This order relates to the "Taxpayers'" motion for reconsideration. The motion fails to establish the board's decision was erroneous in fact or law. See RSA 541:3. The board renews its denial of costs as requested by the Taxpayers in the board's original decision. The Taxpayers have failed to support the claim that the Town has shown bad faith or otherwise frivolously maintained or defended the Town's position in this matter.

Motion denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
George Twigg, III, Chairman

_____
Michele E. LeBrun, Member

Certification

I certify that copies of the within Order have this date been mailed, postage prepaid, to Gary E. & Karen C. Phetteplace, Taxpayers; Chairman, Selectmen of Candia; and Alfred Ikeler, courtesy copy.

Date: July 11, 1995

_____
Valerie B. Lanigan, Clerk

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Certification

I hereby recertify that copies of the within Order have this date been mailed, postage prepaid, to Gary E. & Karen C. Phetteplace, Taxpayers; Chairman, Selectmen of Candia; and Alfred Ikeler, courtesy copy.

Date: July 17, 1995

_____
Valerie B. Lanigan, Clerk

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Amended Certification

I hereby recertify that copies of the within Order have this date been mailed, postage prepaid, to Gary E. & Karen C. Phetteplace, Taxpayers; Chairman, Selectmen of Lyme; and Alfred Ikeler, courtesy copy.

Date: July 17, 1995

_____
Valerie B. Lanigan, Clerk

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