

Zdzislaw and Marianna Filarowski

v.

Town of New Hampton

Docket No.: 13433-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$142,300 (land \$49,300; buildings \$93,000) on a 1.68-acre lot with a house (the Property). 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 their burden.

The Taxpayers requested and were granted leave not to attend the hearing. Their arguments are based on their written submittals in the file.

The Taxpayers argued the assessment was excessive because:

- (1) the house is incomplete and the Town's grading of the quality of the house as a class 5 is speculative and excessive;
- (2) the interior of the house is incomplete; only the wiring, heating and plumbing have been roughed in;

(3) the Town's estimate of 50% completion is excessive; the house is only approximately 35% complete; and

(4) the lot value is excessive based on several comparables; further because the lot is on the corner of two roads, the Town improperly assessed the frontage of both roads.

The Town argued the assessment was proper because:

(1) the house's unfinished factor was based on it being an enclosed shell with roughed in plumbing and electricity and heat installed but not connected and the sheetrock installed but not finished;

(2) the Town applied a minus 55% factor to reflect the unfinished aspects of the house;

(3) the grading was based on the quality of the existing features (siding, marble fireplace, number of bathrooms, general design, etc.);

(4) the Property's lot, while smaller than the comparables, has a good view of the mountains and Lake Winona;

(5) the lot was purchased by the Taxpayers in 1986 for \$50,000 and an adjacent lot, 1A7, sold in 1995 for \$45,000; and

(6) the sale of several developed properties and vacant lots in the area support the basic land value.

Board's Rulings

Based on the evidence, we find the Taxpayers failed to prove the assessment was excessive.

The Taxpayers failed to submit any sales of lots to support their arguments. The Town's assessment methodology adds the estimated cost of the well and septic to the unimproved lot value to produce the contributory value

of an improved lot to the total property. The several lot sales submitted by the Town indicate lot values range from \$35,000 to \$45,000 depending on view, location and lot configuration. Based on the photographs and Town's testimony, the Property's lot is in a good location and has a good view placing its value near the upper end of this range. Further, adding a value for the well and septic to the unimproved lot value range supports the Town's lot value of \$49,300.

The board finds the Town's estimate of both the quality of the house and the 45% completion factor to be reasonable based on both parties' description of the level of completion as of April 1, 1992. To refute the Town's estimate of \$93,000 of building value (house and garage), the Taxpayers could have submitted evidence of moneys and labor expended on the house as of 1992. However, no such evidence was submitted.

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

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Zdzislaw and Marianna Filarowski, Taxpayers; and Chairman, Selectmen of New Hampton.

Dated: March 11, 1996

Valerie B. Lanigan, Clerk

0006