

Francis C. Dow

v.

Town of Newton

Docket No.: 13512-92PT

ORDER

This order relates to the "Taxpayer's" motion dated September 6, 1994. The Taxpayer specifically requested in paragraph 058 that the board issue a decision on the basis of the information before it. The board denies this request and rules the case will be heard as scheduled on November 1, 1994.

To the extent the Taxpayer is requesting leave to not attend the scheduled hearing, the request for leave is granted. If the Taxpayer wishes to file a hearing brief, in lieu of attending the hearing, presenting his arguments and supporting material to supplement what is already in his file, it must reach the board by the date of the hearing. Also, the opposing party must be sent a copy of any correspondence submitted to the board.

The board cautions the Taxpayer to focus his arguments on issues of value as of April 1, 1992. It is the Taxpayer's burden to show the board that the assessment was disproportionately high or unlawful when compared to its fair market value and the general level of assessments in the Town resulting in the Taxpayer paying an unfair share of taxes. See RSA 76:16-a; TAX 203.09(a). Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

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With respect to the Taxpayer's request for costs, this request will be addressed at the hearing.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Francis C. Dow, Taxpayer; and Chairman, Board of Selectmen.

Dated: October 10, 1994

Valerie B. Lanigan, Clerk

Francis C. Dow

v.

Town of Newton

Docket No.: 13512-92-PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$168,400 (land \$51,000; buildings \$117,400) on a 1.78-acre lot with a house (the Property). 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 lot was purchased in May 1991 for \$40,000 and the house was built in July 1991 for \$99,000 with \$5,000 being withheld for unfinished site work;
- (2) time adjusting the total price of \$139,000 at 1% per month to the assessment date of April 1, 1992, results in a value of \$126,400;
- (3) the quality of the building components are generally of lesser quality than some other comparables in the same subdivision;

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- (4) the basement floods during the snow melt in the spring;
- (5) a four foot deep, a 300 foot long, drainage ditch makes 1/2 acre of backland inaccessible; and
- (6) the most comparable properties were Desmond, Morrelli and Papalian.

The Town argued the assessment was proper because:

- (1) land values were derived from sales of lots within the same subdivision; unimproved lots were generally selling in the \$38,000 to \$40,000 range;
- (2) improvements were assessed based on their replacement cost minus any depreciation;
- (3) the wetland portion of the lot was considered in the topography adjustment of the land and a separate 5% adjustment was given for the presence of the drainage ditch;
- (4) the Taxpayer's lot is one of the largest in the subdivision; and
- (5) the Taxpayer's lot has a higher front foot value than outside lots on the main road because of greater privacy and less noise.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$144,150 (land \$51,000; building \$93,150). This assessment is ordered because the board finds the Desmond and Decost comparables bracket the Board's conclusion with respect to the proper assessment of the Dow property. Based on the photos presented as well as testimony regarding building quality, the board

has reduced the building class from a grade 4 to a grade 3. A drainage

adjustment for the wet basement of -5% was factored into the building value. This revised cost approach is supported by the market data (sales).

If the taxes have been paid, the amount paid on the value in excess of \$144,150 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 1992 and 1993. 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.

With respect to the Taxpayer's motion for costs, the board finds the town, although slow to respond, was not guilty of bad faith in providing requested backup information. The burden of proof remains with the Taxpayer to show that an assessment is unequal, unfair or disproportionate.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) 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 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

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appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Francis C. Dow, Taxpayer; and the Chairman, Selectmen of Newton.

Dated: November 28, 1994

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Valerie B. Lanigan, Clerk