

**Lewis and Nancy Itkin**

**v.**

**Town of Lyme**

**Docket No.: 13542-92PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$343,660 (land \$97,300; buildings \$246,000; current use \$360) on a 24.4-acre lot containing a house on 2.2 acres and the remaining 22.2 acres in current use (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 and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Town assessed the house based on the architect of the house;
- (2) the assessment was based on flawed methodology and was not based on market data; and
- (3) the assessment was excessive by 10%.

The Town argued the assessment was proper because:

- (1) the methodology was used consistently throughout the Town and was based on market data;
- (2) an adjustment was made for the driveway;
- (3) the Taxpayers' comparables show proportional assessment; and
- (4) it was consistent with recent land sales in the area.

The board took official notice of the evidence and arguments in Barrett v. Lyme (docket nos. 13541-92 and 15355-94).

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayers did not show overassessment, and therefore the appeal is denied.

The Taxpayers did not present any credible evidence of the Property's fair market value. To carry their 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 assessment and the level of assessment 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.

One of the Taxpayers' main arguments was with the Town's assessment methodology concerning views. The Taxpayers argued the view factor was too subjective and was not based on market information. First, as noted above the Taxpayers did not provide the board with any market information to show that the view factor used on the Property resulted in overassessment. "Justice does not require the correction of errors of valuation whose joint

effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

Second, the board agrees that assessing views is a subjective process, but nonetheless, the market delves in this subjective process when buyers and sellers decide on a purchase price for a property that has a view. Thus, because assessments must be based on market value, see RSA 75:1, views are factors that must be considered in assessing properties. We share the Taxpayers' concern about the subjectivity of the view factor, but it was the Taxpayers' burden to show that the chosen view factor resulted in overassessment. Additionally, the Town admitted that some of the Taxpayers' comparables, which were used to show lower view factors, were underassessed. Such underassessment does not provide relief to the Taxpayers. The underassessment of other properties does not prove the overassessment of the Taxpayers' property. See Appeal of Canata, 129 N.H. 399, 401 (1987).

Additionally, the Town's expert testified about her extensive work in inspecting the properties in the Town and establishing assessments. She indicated the same methodology was used throughout the Town. Because proportionality is the test, we find the Town's expert was more familiar with properties as a whole in the Town and their assessments. Additionally, the Town reinspected the Property and corrected any errors that were evident. The Town's general knowledge of properties and their assessments in the Town and the Town's expert's specific knowledge and review of this Property certainly demonstrate compliance with this state's assessing statutes and provided evidence of proportionality.

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

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to William A. Baker, Esq., Counsel for Lewis and Nancy Itkin, Taxpayers; and Chairman, Selectmen of Lyme.

Dated: November 30, 1995

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Valerie B. Lanigan, Clerk

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