

**William & Joy O'Connor**

**v.**

**Town of Londonderry**

**Docket No.: 13583-92-PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$140,200 on a 1.12-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 granted.

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 carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) an undersized septic system and subdivision covenant violations diminish the Property's marketability;
- 2) the Property was purchased May 6, 1992, for a negotiated price of \$125,000 after protective covenant and zoning violations were discovered;

- 3) the house is extremely oversized and the three-car detached garage has poor access;
- 4) two appraisals indicated overassessment -- \$145,000 (December 1991, without consideration of building violations) and \$146,000 (February 1994, with consideration of building violations);
- 5) larger, more expensive homes in the same neighborhood were assessed less;  
and
- 6) a proper assessment should be between \$82,500 and \$95,700.

The Town argued the assessment was proper because:

- 1) the Taxpayers' purchase was not an arm's-length transaction because the selling price was influenced by the previous foreclosure;
- 2) the covenant and zoning violations did not impact the Property's value because a variance was issued in March of 1992;
- 3) the garage was constructed in 1983 and since then no actions have been brought to have the building removed to be in compliance with the covenant restrictions;
- 4) the resale to the Taxpayers was not prevented by the covenant violations;
- 5) physical and functional depreciation was given to address the building's size and layout;
- 6) the Taxpayers' appraisals were invalid, i.e., two comparable sales were not arm's-length transactions, square-footage adjustments were inaccurate, etc.;
- and
- 7) the Taxpayers' comparables demonstrated the Property was equitably assessed.

**BOARD FINDINGS**

Based on the evidence, the board finds the assessment should be \$109,000 (land \$18,700; buildings \$90,300).

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This assessment is calculated by revising the Town's depreciation on the house to 5% physical and 40% functional and on the detached garage to 10% physical and 40% functional. The board finds that the superadequacy of the size of the house, the lack of easy access to the detached garage and access to the garage second floor and the market evidence submitted by the Taxpayers all support the need for greater functional depreciation to the improvements.

Despite the fact the Property was purchased from a bank, the board gives some weight to the various considerations and appraisals (the listing of the Property for two years at \$157,000, the Taxpayers' initial offer for \$143,000, the Taxpayers' purchase for \$125,000 (after renegotiation with the bank from the \$143,000 offer) and the two appraisals for approximately \$145,000). Due to the dwellings' large size and the specific improvements as a daycare by former owners, the market that would recognize these improvements as contributing value is quite narrow. While no details were submitted as to the type of exposure the bank gave the Property to the market, it being available for \$157,000 for two years is some indication of the functional obsolescence of the overbuilt living area. It is conceivable that because the Property is so unique that a longer than normal exposure to the market with some specialized advertising would be necessary to attract an offer that would recognize the daycare use as its highest and best use.

The board finds the detached garage lacks full utility due to the lack of a driveway and good access to the second floor. However, the board finds the

risk of having a legal action brought against any owner to remove the building due to covenant restriction violations is so slight and speculative, it does not significantly affect market value. While the Taxpayers testified that they had

had

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renegotiated their original offer with the bank based on this issue, the board finds that the bank is not a typical seller and would likely be influenced by such arguments more than the typical owner.

If the taxes have been paid, the amount paid on the value in excess of \$109,000 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 1993 and 1994. 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.

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 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. This, 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. 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to William and Joy O'Connor, Taxpayers; and Chairman, Board of Selectmen, Town of Londonderry.

Dated: August 9, 1995

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Clerk

Melanie J. Ekstrom, Deputy

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