

John & Aileen Huber

v.

Town of Charlestown

Docket No.: 13793-93PT

DECISION

The Taxpayers appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$23,150 (building only) on a mobile home (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) the house was destroyed by fire in October, 1992 and had to be completely gutted;
- 2) all of the plumbing and 75% of the electric had to be replaced;

- 3) the insurance settlement for damages to the structure was \$43,400 and the contracted price to repair the home was \$38,680; and
- 4) the contractor estimated the value of the home to be approximately \$5,000 - \$6,000.

The Town argued the assessment was proper because:

- 1) the Taxpayers stated they purchased the house in 1989 for \$65,000;
- 2) assuming a 30-year life, normal depreciation was 87% of replacement cost at \$56,550;
- 3) the value was determined by reducing the depreciated value of \$56,550 by the cost to repair (\$38,680) for a total value of \$17,900; and
- 4) a shed on the Property was valued at \$1,000.

BOARD FINDINGS

Based on the evidence, the board finds the proper assessment for the 1993 tax year to be \$7,840 for the following reasons:

- 1) the home was destroyed prior to April 1, 1993 and had to be gutted to the shell; the Town's estimate of 50% depreciation is insufficient given the extent of the loss;
- 2) to support the assessment, the Town used the 1989 purchase price and estimated a depreciated replacement cost. The Town did not employ the use of the cost approach in arriving at its value nor did the Town research the market to determine the fair market value based upon sales of similar properties; and
- 3) the Taxpayers submitted evidence from the contractor who restored the home, who estimated the value of the damaged structure to be between \$5,000 and \$6,000.

The board finds the contractor's submission to be credible and has determined a replacement value of \$6,000 is appropriate.

Neither party challenged the department of revenue administration's equalization ratio of 114% for the 1993 tax year for the Town of Charlestown. The \$6,000 equalizes to an assessed value of \$6,840. No evidence was submitted as to the value of the shed. Therefore, the assessment is as follows:

House -\$6,840

Shed - 1,000

Total 1993 Assessment -\$7,840

If the taxes have been paid, the amount paid on the value in excess of \$7,840 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. 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. The board does note that good-faith adjustments should be made based on the Property's state of restoration for the 1994 tax year.

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

Page 4

Huber v. Town of Charlestown
Docket No.: 13793-93PT

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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to John & Aileen Huber, Taxpayers; and Chairman, Board of Selectmen of Charlestown.

Dated: May 4, 1995

Valerie B. Lanigan, Clerk

0007