

Constance and Quentin Young

v.

Town of Brookline

Docket No.: 14139-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$181,900 (land \$114,400; buildings \$67,500) on a .750-acre lot with a house (the Property). For the reasons stated below, the appeal for abatement is granted to the Town's \$179,500 adjusted assessment.

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 their burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the assessment included a \$2,462 cottage assessment, but the cottage was on another lot;
- (2) an April 1993 appraisal estimated a \$176,000 value; and
- (3) the Town did not adjust the sales of lot 10 and 11 as it had stated it would because the buyer of those lots had probably overpaid for the lots.

The Town argued the assessment, with the adjustment below, was proper because:

- (1) the Town used two sales, lots 10 and 11, to calculate the assessment; and
- (2) the same method was used for all the lake properties, resulting in a fair assessment.

The Town acknowledged the \$2,462 cottage assessment should not have been assessed to the Property, resulting in a revised \$179,500 assessment.

BOARD'S RULINGS

Based on the evidence, the board finds the proper assessment should be \$179,500 as recalculated by the Town. This recalculated assessment deducted the erroneous cottage assessment and was very close in value to the Taxpayers' \$176,000 appraised value. Because the adjusted assessment was based on the methodology used throughout the Town, that figure is the appropriate figure to apply to this Property.

If the taxes have been paid, the amount paid on the value in excess of \$179,500 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, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1994 and 1995. 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 "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 Constance and Quentin Young, Taxpayers; and Chairman, Board of Selectmen.

Dated: March 27, 1996

Valerie B. Lanigan, Clerk