

**Paul McAuliffe**

**v.**

**Town of Canterbury**

**Docket No.: 14255-93PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$60,650 (land \$14,350; buildings \$46,300) on a 3-acre lot with a house (the Property). The Taxpayer 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 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 his burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property abuts the Town dump and the water must be tested for contamination;
- (2) an August 1993 appraisal estimated a \$72,000 value and an October 1993

appraisal estimated a \$69,000 value;

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- (3) the Property would never sell for its equalized value;
- (4) the fair market value as of April 1993 should be \$70,000;
- (5) the Town's comparables are all larger than the Property and have more living space; and
- (6) the Town did not rely on market values when assessing the Property and the assessment failed to recognize the negative impact of abutting the Town dump.

The Town argued the assessment was proper because:

- (1) the same methodology was used throughout the Town;
- (2) the Taxpayer's appraisals were flawed because the comparables are located in other Towns and the appraiser failed to time adjust the sale prices to the April 1, 1993 assessment date; and
- (3) comparable properties in the Town support the assessment.

#### **Board's Rulings**

Based on the evidence, the board finds the proper assessment should be \$46,900, which equates to a \$70,000 market value. The board makes this conclusion for the following reasons.

1) The board basically accepts the Taxpayer's appraisals, and we find a market value of \$70,000. The \$60,650 assessment when equalized by the revenue department's .67 equalization ratio indicated an equalized assessment of \$90,500, and this clearly exceeded the Taxpayer's appraisals. These appraisals were based on recent sales and gave a good indication of the Property's value that was consistent with the board's judgement of value.

2) The Property warranted functional depreciation on the assessment-

record card, but no functional depreciation was given. The Property has several problems that warrant functional depreciation including: 1) only

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having one bedroom; 2) the ten-inch thick walls, which reduces the interior space; 3) the electric heat (albeit with a woodstove also); and 4) the location near the recycling center (more properly called economic depreciation).

3) The assessment on the garage, which equalized to \$8,348 seemed excessive. The appraisers placed values of \$4,500 and \$3,000 respectively on the garage.

4) The Town did not submit any sales information to refute the Taxpayers's appraisals. Assessments are required to be based on market value, RSA 75:1, and assessments are supposed to be annually reviewed with the market, RSA 75:8. Therefore, the Town should have presented some market information.

We note the assessment-record card may not have included the value of the 8 x 12 screen porch, which apparently was only listed as a deck, and the assessment-record card may not have captured the woodstove opening. Nonetheless, we conclude that a \$70,000 fair market value is the proper value, reducing that value by .67 (the equalization ratio) results in the \$46,900 ordered assessments.

If the taxes have been paid, the amount paid on the value in excess of \$46,900 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. 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.

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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.

Thus, 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Paul McAuliffe, Taxpayer; and Chairman, Selectmen of Canterbury.

Dated: October 27, 1995

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Lynn M. Wheeler, Deputy Clerk

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