

Jane E. Stone

v.

Town of Lempster

Docket No.: 14838-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$65,800 (land \$12,100; buildings \$53,700) on 5.1 acres with a building (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 denied. The board, however, noted a mathematical error on the assessment-record card which should be corrected by the Town. The correct assessment should be \$65,400 (land \$12,100; buildings \$53,300).

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 failed to carry this burden.

Stone v. Town of Lempster  
Docket No.: 14838-93PT

The Taxpayer argued the assessment was excessive because:

- 1) the foundation is in poor condition;
- 2) the road is not maintained by the Town and is not passable;
- 3) the bank refused a fixed mortgage due to its poor condition; and
- 4) the assessment increased \$41,800 in one year and should remain as assessed in 1992 at \$31,200.

The Town argued the assessment was proper because:

- 1) sales of comparables demonstrated similarity in assessments;
- 2) an additional 10% physical depreciation was deducted from the building value due to the condition of the foundation;
- 3) the land was reduced by 20% because the Property is on a private road, not maintained by the Town; and
- 4) the Taxpayer did not present any market evidence or any evidence of inequity.

#### **BOARD FINDINGS**

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed for the following reasons:

1) the Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer 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;

2) increases from past assessments are not evidence that a taxpayer's

property is disproportionally assessed compared to that of other properties in

Page 3

Stone v. Town of Lempster

Docket No.: 14838-93PT

general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985);

3) in addition to the 20% depreciation applied to the replacement cost of the subject and comparable homes, the Town further reduced the building value by 10% to account for the condition of the basement/foundation. The board finds this adjustment, which equates to a value of \$7,580, to be reasonable based on the limited evidence submitted. The board does note that a mathematical error was made in calculating the percentage of replacement cost.

The correct building assessment should be \$53,300 ( $\$76,100 \times .70 = \$53,300$  rounded); and

4) the Town reduced the lot value by 20% to account for its being on a private, non-maintained road. Again, the board finds this adjustment to be reasonable based on the limited evidence presented.

If the taxes have been paid, the amount paid on the value in excess of \$65,400 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 "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 Page 4  
Stone v. Town of Lempster  
Docket No.: 14838-93PT

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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
Paul B. Franklin, Member

\_\_\_\_\_  
Michele E. LeBrun, Member

**Certification**

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Jane E. Stone, Taxpayer; and Chairman, Board of Selectmen.

Dated: January 31, 1996

Clerk

\_\_\_\_\_  
Melanie J. Ekstrom, Deputy

Jane E. Stone

v.

Town of Lempster

Docket No.: 14838-93PT

ORDER

This order relates to the "Taxpayer's" rehearing motion. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing not previously considered or addressed in the board's decision. See RSA 541:3.

Motion denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
Paul B. Franklin, Member

\_\_\_\_\_  
Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Jane E. Stone, Taxpayer; and Chairman, Board of Selectmen.

Dated: March 27, 1996

\_\_\_\_\_  
Valerie B. Lanigan, Clerk