

**Martin and Diane Tirrell**

**v.**

**Town of Lisbon**

**Docket No.: 15147-94PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessments of: \$57,000 (land \$22,750; buildings \$34,250) on Lot 5, a 2.4-acre lot with a house; and \$19,350 (land \$19,050; buildings \$300) on Lot 14, a 4.84-acre lot with a shed (the Properties). The Properties are separated by Presby Road; however, the Taxpayers also owned, but did not appeal, a vacant lot assessed at \$9,900, which is contiguous to Lot 5. 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 abatements is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or was unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality,

the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

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The Taxpayers argued the assessments were excessive because:

- (1) both lots are very hilly, have no marketable timber and the soils are clay and shale;
  - (2) a realtor stated the neighboring lots detract from the Properties' value;
  - (3) an abutting 1-acre lot was listed for sale for 8 years at the Town's \$9,900 assessment and finally sold for \$2,400 (to the Taxpayers);
  - (4) a property assessed at \$19,700 sold for only \$10,000 in November, 1993;
- and
- (5) the Properties are currently listed for sale for \$60,000.

The Taxpayers argued the assessment on Lot 5 was excessive because:

- (1) the Town added the value of porches during the 1994 pick-ups, but the porches were already included from 1989;
- (2) the kitchen addition cost \$300 yet the Town assessed a \$5,250 value;
- (3) the Town should not have assessed the entire lot as frontage; and
- (4) the Town's comparable (Dean) is a 5-year old home on cement foundation when the Property is over 100 years old with inferior construction materials.

The Taxpayers argued the assessment on Lot 14 was excessive because:

- (1) the lot is used only for gardening and pastures;
- (2) the Town assessed the lot with two sheds where there is only one;

- (3) the power-line easement was not reflected in the assessment; and
- (4) this lot was listed for sale for \$15,000 for two years with no buyers.

The Town argued the assessments were proper because:

- (1) the porches were not on the assessment-record card in 1989;
- (2) the assessments adequately address the Properties' topography and the building's incomplete condition; and
- (3) comparable properties support the assessments.

#### **BOARD'S RULINGS**

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed. The board reviewed the 1991 and 1994 assessment-record cards and finds that the Town did not assess the

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Taxpayers for the porch in 1991. The 1994 assessment-record card indicates the base value the Town assigned to the porch in 1994 was \$5,000. This value was then adjusted (as a part of the entire replacement cost of the house) for physical (30%) and functional (40%) depreciation and then multiplied by the Town's 1.05 local multiplier. The indicated assessed value for the porch was in fact \$2,200 which when divided by the 134% equalization ratio<sup>1</sup> determined by the department of revenue administration (DRA) indicated a market value adjustment for the porch of \$1,645. ( $\$5,000 \times .70 \times .60 \times 1.05 = \$2,200$ )

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<sup>1</sup> Assessments must be based on market value. See RSA 75:1. Due to market fluctuations, assessments may not always be at market value. A property's assessment, therefore, is not unfair simply because it exceeds the property's market value. The assessment on a specific property, however, must be proportional to the general level of assessment in the municipality. In this municipality, the 1994 level of assessment was 134% as determined by DRA's equalization ratio. This means assessments generally were higher than market value. The Property's total equalized assessment was \$57,000 rounded ( $\$76,350$  assessment  $\div$  1.34 equalization ratio). This equalized assessment should provide an approximation of market value.

assessed value ÷ 1.34 = \$1,645 indicated market value)

To determine the value added for the kitchen addition, the board calculated the 1994 replacement cost new of the house of \$55,450, deducted the undepreciated \$5,000 porch value, adjusted for physical (30%) and functional (40%) depreciation and multiplied by the 1.05 local multiplier. This exercise indicated a building value of \$22,250 which, when compared to the 1991 value of \$19,200 (replacement cost of cape of \$18,300 multiplied by 1.05 multiplier) indicated an added assessed value of \$3,050. This value, when divided by the 134% equalization ratio, indicated an added market value to the property of \$2,275 for the kitchen addition. ( $\$55,450 - 5,000 \times .70 \times .60 \times 1.05 = \$22,250 - \$19,200 (\$18,300 \times 1.05) = \$3,050$  assessed value ÷ 1.34 = \$2,275 indicated market value).

In short, the increase in assessed value to the Property for the porch and kitchen additions was \$5,250 (\$2,200 porch; \$3,050 kitchen) or a market value estimate of \$3,920 ( $\$5,250 \div 1.34$ ).

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The Taxpayers stated that the Properties were on the market for \$60,000. As stated earlier, the Properties combined assessed value of \$76,350 when equalized by the DRA's 134% ratio indicates a market value of \$57,000 ( $\$76,350 \div 1.34$ ). This indicated value is less than the asking price on the Properties. To prove overassessment, the Taxpayers would have to show the Properties were worth less than the \$57,000 equalized value. Such a showing would indicate the Properties were assessed higher than the general level of assessment.

The Taxpayers raised several concerns about certain errors in the

assessment. However, the Taxpayers did not show these errors resulted in disproportionality. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985), quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

Lastly, the Taxpayers stated that neighboring properties detracted from the Properties value and that a realtor estimated a \$49,500 value. No market evidence was submitted to support the Taxpayers' assertion. Specifically, there was no written support of the realtor's opinion for the board to review the soundness of the value conclusion. Based on the evidence, the board finds the general neighborhood is of lower quality homes and finds the assessment is reasonable.

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  
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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

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Paul B. Franklin, Chairman

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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 Martin and Diane Tirrell, Taxpayers; and Chairman, Selectmen of Lisbon.

Date: February 15, 1997

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Valerie B. Lanigan, Clerk

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