

**Albert and Lucille Philipps**

**v.**

**Town of Gilmanton**

**Docket No.: 15240-94PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$202,400 on a 23.82-acre lot (majority of acreage in current use) with a single-family house (the Property). 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 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 Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

- (1) the depreciation should have been 34% consistent with other restored capes;
- (2) the quality adjustment was wrong and should have been A3 not A5;
- (3) the assessment update should have reduced the assessment by more than 4%;
- (4) the neighborhood code was incorrectly changed from "E" to "F"; and
- (5) the assessment should have been \$150,000.

The Town argued the assessment was proper because:

- (1) quality adjustment was correct for a completely renovated or reproduction cape (range of A3 to A5);
- (2) the depreciation was correct given the house's condition;
- (3) the Taxpayers' construction costs did not include the significant amount of "sweat equity" that went into the house;
- (4) the Town's comparables supported the assessment; and
- (5) the Taxpayers did not show overassessment.

The board took a view of the Property and most of the parties' comparables. Because of the board's scheduling, the board was only able to call the Taxpayers the morning of the view, and unfortunately, the Taxpayers were not home. Nonetheless, the board viewed the Property from the exterior and looked into several windows. In terms of the comparables, the board took only an exterior view.

#### Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$182,077 ((building \$156,300; extra features \$10,600; land \$15,177) (land ad valorem \$14,400; land current use \$777)). The board calculated this assessment by including 5% functional depreciation.

The board spent considerable time reviewing the Property and the parties' comparables. This was done during our view and when we returned to the office. In the end, the Town's comparables #1 and #5 were the most comparable properties. Other Town comparables differed in building size, land size or overall quality so significantly that the board did not see them as comparable. Comparable #1 sold in 1991 for \$190,000, and approximately \$6,500 in additional work was done to the Property between 1991 and 1994.

However, the change in the Town's equalization ratios from 1991 to 1993 indicated a falling market. The

1991 ratio was 1.11, and the 1993 ratio was 1.40, indicating an approximate 20% drop. Page 3

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Therefore, to use Comparable #1, a time adjustment would be required. The Town indicated a recent appraisal on Comparable #1 indicated a \$190,000 value, but the board was not supplied that appraisal, and

therefore, we give it no weight. If the value only dropped by one-half of the 20%, the adjusted value would be approximately \$177,500 (\$190,000 sale price x .9 (-10% time adjustment) + \$6,500 for addition). This adjusted sale shows some adjustment is warranted to the Property.

Comparable #5 was not a sale. Rather, it is on the market in 1996 for \$209,900, and a realtor opined that it would sell for between \$190,000 and \$199,900. Comparable #5 is, however, a reproduction antique, which would not have the functional problems inherent in a true antique.

Based on the market information and our review of the Property's assessment and the Taxpayers' testimony, the board finds the assessment should have included a 5% depreciation for functional obsolescence for such things as lack of sufficient insulation, lack of modern kitchen cabinets, countertops and sink, single-wall interior construction (adversely affecting the placement of electrical outlets) and room layout.

The board finds, however, the Town's other adjustments, such as grade and location, to be warranted.

If the taxes have been paid, the amount paid on the value in excess of \$182,077 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

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Ignatius MacLellan, Esq., Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Albert and Lucille Philipps, Taxpayers; and Chairman, Selectmen of Gilmanton.

Date: November 20, 1996

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Valerie B. Lanigan, Clerk

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