

Robert and Florence Landry

v.

Town of Loudon

Docket No.: 16230-95PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 adjusted assessment of \$105,987 (land \$28,242; buildings \$77,745) on .3-acre lot 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 was 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. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

- (1) the square footage of the dwelling is incorrect; and
- (2) the hot tub is not attached in any way as the tub is filled and drained

through a hose.

The Town argued the assessment was proper because:

- (1) the gross living area may still be in doubt;
- (2) the dishwasher is built in and valued at \$400 by the state manual;
- (3) the hot tub was plumbed in 1995 but has since been removed; and
- (4) the porch value reflected the roof over the concrete slab.

Page 2

Landry v. Town of Loudon

Docket No.: 16230-95PT

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

Based on the evidence, the board finds the proper assessment to be \$91,040 (land \$28,240; buildings \$62,800).

During the hearing, conflicting evidence was presented as to the dimensions of the main portion of the dwelling. Consequently, the board requested its appraiser, Scott Bartlett, to measure the improvements. Mr. Bartlett has submitted a report (copy attached) which includes his measurements and sketch of the building and photographs of the building.

Based on Mr. Bartlett's measurements and the measurements done by Mr. Jeffrey Earles in 1996, the board concludes the square footage of the dwelling is 1,516 square feet. The board also finds, based on Mr. Bartlett's report, the attached garage needs to be corrected from 20' x 20' (400 square feet) to 24' x 24' (576 square feet).

The board finds the hot tub, as described by the Taxpayers, was entirely portable (neither being plumbed or otherwise physically incorporated with the house) and was thus, not part of the real estate in 1995.

The board finds the dishwasher addition of \$400 is proper based on the State of New Hampshire Appraisal Manual used by the Town. Dishwashers that are fixtures to the real estate by their built-in nature are not included in the base square foot rate and are added as extras under the state's replacement cost manual.

Page 3  
 Landry v. Town of Loudon  
 Docket No.: 16230-95PT

Based on the above findings, the board finds the assessment for 1995 to be calculated as follows:

House

|                                |               |
|--------------------------------|---------------|
| 1,516 square feet x \$34.40 =  | \$ 52,150     |
| Slab Foundation Areas          | \$- 2,100     |
| Basement Finish                | \$ 700        |
| Kitchen Built-ins (Dishwasher) | \$ 400        |
| Open Porch                     | <u>\$ 900</u> |
| Total                          | \$ 52,050     |
| Depreciation                   | <u>x .85</u>  |
| Depreciated Replacement Cost   | \$ 44,250     |

Garage

|                            |                |
|----------------------------|----------------|
| 576 square feet-Base Value | \$ 6,600       |
| Attached Wall              | <u>\$- 400</u> |
| Total                      | \$ 6,200       |

|                                   |           |               |
|-----------------------------------|-----------|---------------|
| Depreciation                      | <u>x</u>  | <u>.97</u>    |
| Total Depreciated Garage Value    | \$        | 6,000         |
|                                   |           |               |
| Total Depreciated Building Values | \$        | 50,250        |
| Local Multiplier                  | <u>x</u>  | <u>1.25</u>   |
| Total Building Assessment         | \$        | 62,800        |
| Land Assessment                   | \$        | <u>28,240</u> |
| <b>Total Assessment</b>           | <b>\$</b> | <b>91,040</b> |

If the taxes have been paid, the amount paid on the value in excess of \$91,040 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 1996. 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

Page 4  
Landry v. Town of Loudon  
Docket No.: 16230-95PT

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, Chairman

---

Michele E. LeBrun, Member

---

Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert and Florence Landry, Taxpayers; and Chairman, Selectmen of Loudon.

Date: March 18, 1997

---

Valerie B. Lanigan, Clerk

0006