

Ernest A. Domings and Gladys Domings (Deceased)

v.

Town of Fremont

Docket No. 4243-88

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the Town's 1988 assessment of \$122,050 (land, \$74,050; buildings, \$48,000) on their real estate on Rte. 107, consisting of a mobile home and garage on approximately 3.4 acres (the Property). 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 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved they were disproportionally taxed.

The Taxpayer argued 1) that an appraisal done in January of 1989, by Gary W. Todd, established a market value of \$105,000; 2) that the property had been listed on the market in 1987 for \$85,000; and 3) that the front of the lot had to be drained to be usable and that the mobile home foundation was badly out of plumb due to the wet site.

The Town argued 1) the adjustments to the comparable sales of the Taxpayers for the lack of a garage was \$5,000 too little; 2) that the wetness in the front of the lot had been corrected by drainage; and 3) that the building's foundation problems had been recognized in the depreciation.

In deciding this appeal we note two principles that the board operates under. First, in deciding whether a taxpayer has carried his/her burden, by necessity we review the various valuations being presented by the parties. Even though this is an important part of our analysis, the board is not

obligated to

or empowered to establish a fair market value for an appealed property. Appeal

of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine, using the parties' valuations, whether the appealed assessment has resulted in a taxpayer paying an unfair share of taxes. See Id.

Second, in reviewing and ultimately in deciding upon a proper assessment, the board, just like the municipalities and taxpayers, does not arrive at an assessment by way of a precise science. No, valuing properties is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 NH 919, 921 (1979). Finally, we note that in making this judgment, a value for the entire property, i.e., land and buildings, is determined. Because of the existing assessment process, however, this total value is then allocated between the land and buildings even though the market place does not view or value a property in such a way.

Based on the evidence, including a review of the Property as described to the board and the Taxpayers' comparables and applying the above-discussed principles, we find the proper assessment should be \$110,000. We have not allocated this assessment between land and building because we have based our opinion on the Property's combined land and building value. The Town may allocate the assessment between land and building, using an allocation consistent with the Town's usual practice.

If taxes have been paid, the amount paid on the value in excess of \$110,000 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Peter J. Donahue, Member

Paul B. Franklin, Member

Ignatius MacLellan, Member

Date: January 15, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Ernest A. Domings, taxpayer; and Chairman, Selectmen of Fremont.

Michele E. LeBrun, Clerk

Date: January 15, 1991

0009