

**Alban Bourgault**  
**v.**  
**Town of Greenville**  
  
**Docket No. 4290-88**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1988 assessment of \$164,000 (land, \$27,700; buildings, \$136,300) on the real estate consisting of a dwelling on an approximately .6-acre lot on Temple Street (the Property). The Town failed to appear, but consistent with our rule, TAX 102.03(g), the Town was not defaulted. This decision is based on the evidence presented to the board. 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 Taxpayer carried this burden and proved he was disproportionally taxed.

The Taxpayer argued the assessment was excessive because:

- 1) the property was assessed higher than similar and somewhat better properties in the area;
- 2) an appraisal done by Whitney Associates in 1989 estimated a market value of \$115,000; and

3) the Town's measurements of the dwelling were excessive compared to the Whitney Associates' appraisal.

Based on the evidence, including the board's inspector's report, we find the correct assessment should be \$121,150 (land \$27,700 and building \$93,450).

Subsequent to the hearing, the board, in a separate order, ordered the Town to remeasure the property to determine if an error had been made.

The Town responded that it had remeasured the property and had found the measurements on the assessment card to be accurate.

The Taxpayer's appraiser responded stating it was his opinion that the discrepancy between the parties' living-area square footages was that the Town had included the garage/shed area in with its living-area square footages.

After the responses from the parties, the board was still uncertain as to the correct measurements of the building and as to the actual living area contained in the dwelling. Pursuant to RSA 71-B:7 and 14, the board had its appraiser/investigator remeasure the property and file a report (copy attached).

The board finds that its investigator's measurements and determination of living-area square footage are similar to those contained in the Taxpayer's appraisal. The board therefore rules the Town had incorrectly measured the dwelling and calculated the living area.

The board finds the replacement cost for the buildings of \$146,050, as contained in the board's investigator's report, accurately accounts for the finished and unfinished areas of the building. So as to be consistent with the depreciation methodology as used by the Town during the revaluation (See

Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 [1982]

[consistent methodology is evidence of proportionality]), the board finds the Town's depreciation of 36 percent should be applied to the \$146,050 to arrive at the correct building assessment of \$93,450.

The board finds no change is warranted in the Town's land assessment.

Therefore, if the taxes have been paid, the amount paid on the value in excess of \$121,150 is to be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

August 23, 1991

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin

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Michele E. LeBrun

I certify that copies of the within decision have been mailed this date, postage prepaid, to Robert Taft, Esq., Counsel for the Taxpayer, and to the Chairman, Board of Selectmen, Town of Greenville.

August 23, 1991

Brenda L. Tibbetts, Clerk