

William J. Nyhan and Joyce K. Nyhan  
v.  
Town of Exeter

Docket No. 4439-88

DECISION

A hearing in this appeal was held, as scheduled, on October 19, 1989. The Taxpayers were represented by William J. Nyhan, one of them. The Town was represented by John DeVittori, Assessor.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$152,100 (land, \$36,000; buildings, \$116,100) placed on their real estate, located at 3 Woodlawn Circle (Map 09-10, Block 012, Parcel No. 006.001) for the 1988 tax year. The property consists of a condominium on .13 acre of land.

Neither party challenged the Department of Revenue Administration's equalization ratio of 100 percent for the Town of Exeter. Based on that ratio the Taxpayers' assessment equates to a market value of \$152,100.

The Taxpayers argued they were overassessed based on the assessment of the other condominium in the subject property, the assessments of five other properties on Woodlawn Circle and two sales and three asking prices of condominiums.

The Town's position was the land value was based on schedules used throughout the town and the building value was based on the cost approach. The

Town agreed it had the incorrect building dimensions of the subject property.

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The Taxpayers' appeal is based on the Constitution of New Hampshire,

Part 2, Article 5, which states in part:

And further, full power and authority are hereby given and granted to the said general court, from time to time . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state; and upon all estates within the same . . . .

and RSA 75:1 (supp) which states:

Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which

cannot be determined by personal examination.

"If the appellants established the fact that their tax for the year . . . was excessive, they were entitled to a repayment or abatement of the excess tax, according as they had or had not paid it. They could have shown that the tax was excessive in various ways. If the whole or a part of the property taxed to them was exempt from taxation, they could have shown that their tax was excessive by proof that the whole or a part of their property was exempt. If they did not own the whole or a part of the property taxed to them, they could have shown the same fact by proof that they did not own any property in the taxing district, or a less quantity than was taxed to them. If their property was correctly appraised, they could have shown that their tax was excessive by proof that a greater valuation than that assessed upon it or too large a rate was made use of in computing the tax, or that some

mathematical error occurred in the computation. And if the ratio between the true and assessed value of their property was greater than the ratio between

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the true and assessed value of all other property in the taxing district, this might have constituted the evidence from which it could have been found that their tax was excessive." Winnipiseogee v. Laconia, 74 N.H. 82, 83-84 (1906).

The Board finds as follows. The subject dwelling consists of 818.5 square feet on the first floor and 775 square feet on the second floor rather than the 960 square feet used by the Town for both floors. Using \$66 per square foot the proper base value is \$105,138. The basement reduction, due to less area, is \$4,617. Making the Town's adjustments for attic, plumbing, deck, market factor, and physical depreciation results in a building assessment of \$108,811.

For the above stated reasons the Board rules that the proper assessment for the 1988 tax year is:

land	\$ 36,000
building	<u>108,800</u>
total	\$144,800

If the taxes have been paid, the amount paid on the value in excess of \$144,800 is to be refunded with interest at six percent per annum from date of payment to date of refund.

SO ORDERED.

December 6, 1989

BOARD OF TAX AND LAND APPEALS

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Anne S. Richmond, Chairman

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George Twigg, III

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Peter J. Donahue

(Mr. Franklin did not sit)

Paul B. Franklin

I certify that copies of the within decision have been mailed this date, postage prepaid, to William J. and Joyce K. Nyhan, the Taxpayers, and to the Chairman, Board of Selectmen, Town of Exeter.

Date: December 6, 1989

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Michele E. LeBrun, Clerk

