

**Peter F. Engel and Ellen Engel**

**v.**

**Town of New Hampton**

**Docket No. 4497-88 and 6399-89**

**DECISION**

A hearing in this appeal was held, as scheduled, on July 12, 1990. The Taxpayers were represented by Ellen Engel, one of them. The Town was represented by Arthur Morrill, Appraiser.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$133,100 (land, \$17,000; buildings, \$116,100) placed on their real estate, located on Heights Road for the 1988 and 1989 tax years. The property consists of a dwelling on a 1.72 acre lot and is identified as Map R8, Lot 1-H. The Taxpayer also owns, but did not appeal, an undeveloped parcel of land with an assessment of \$17,000 identified as Map R-8, Lot 1A-3.

Neither party challenged the Department of Revenue Administration's equalization ratio of 29% for 1988 and 33% for 1989 for the Town of New Hampton. Based on those ratios the Taxpayers' total assessment equates to a market value of \$517,586 in 1988 and \$454,848 in 1989.

Mrs. Engel stated that realtors had indicated that a reasonable asking price for Lot 1-H in 1988 was \$295,000 and in 1989 was \$275,000. She argued that the house was incorrectly graded as Class 5. Based on the quality of the materials of her house compared to the N.H. State Manual's description and with neighbors houses, she argued the house should be graded as a Class 4.

Mrs. Engel stated that they had purchased the lot 1-H in 1986 for \$34,000 and had the dwelling constructed in 1987 for \$240,000 and also purchased lot 1A-3 in 1987 for \$33,000.

Mr. Morrill argued that the location was one of the best in Town and that the land was possibly underassessed. He argued that the grading of the house

as a 5 was consistent with the quality and market appeal of the house. He stated

that the realtor's estimate of market value as testified to by Mrs. Engel were reasonable. The Town submitted the assessment cards of several nearby properties as evidence of consistent grading and appraisal practices.

The Board's investigator, in his report to the Board, adjusted the square footage of the dwelling's living area and garage area and recommended an assessment of \$124,050.

The Board rules as follows.

The Taxpayer's 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.

"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the assessed value of all other taxable estate bears to its true value. Boston & Maine R. R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450." Bemis v. Claremont, 98 N.H. 446, 452 (1954).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H.

187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

While there was some testimony as to some of the decks being partially complete in 1988 and then completed in 1989, the Board finds that for practical assessing purposes the property was essentially the same for both years.

The Board rules that the grading of a dwelling is not entirely an objective mathematical calculation. Just as human subjectivity is reflective in the marketplace, so is an appraiser's subjective opinion valid in the appraising of a property. While the appraiser's judgement should be guided by the quality of the "brick and mortar" of the dwelling, scientific adherence to the cost approach to value does not necessarily equate to market value.

"The statute makes the proceeding for the abatement of a tax a summary one, free from technical and formal obstructions. The question is, does justice require an abatement? . . . The justice to be administered is to be sufficiently exact for the practical purposes of the legislature, who did not intend to invite the parties to a struggle for costs, or a ruinous contention about trifles." Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200

The Board rules that the entire estate of the Taxpayers within the Town must be considered to determine if an abatement is warranted.

Equity requires that the plaintiffs be relieved by an abatement of such sum as they have paid in excess of their share of the common burden. Their share is such a proportion of the whole tax as the true value of their property bears to the true value of all the taxable estate in the city. If all the other taxable estate in the city except the plaintiffs' were appraised at its true value, the appraisal of theirs at a sum equal to the true value of the whole would assign to them their share of the common burden; and the fact that some classes of their estate were appraised too high would not entitle them to an abatement if the error were neutralized by an under-valuation of other estate. Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200

Based on the photographic evidence before the Board, the Board finds that it's investigator's square footage calculations and depreciations most accurately reflect the physical layout of the building and its physical condition.

Weighing the testimony and evidence of the Taxpayer, the Town and the Board's investigator, the Board rules that an equitable assessment is achieved

by using the Board's investigators square foot calculations and by grading the dwelling a 4 1/2 class.

The Board rules that the assessment is calculated as follows:

|   |   |                |
|---|---|----------------|
| <u>Dwelling</u>                               |   |                |
| 2st 1152 sq. ft. x 40.10                      | = | \$46,200       |
| 1st 198 sq. ft. x 26.25                       | = | 5,200          |
| Basement area finish and heat                 | = | +9,300         |
| Hearths                                       | = | +2,000         |
| Kitchen builtins                              | = | +1,100         |
| Plumbing                                      | = | +2,400         |
| Porches and decks                             | = | <u>+10,000</u> |
|   |   | \$76,200       |
| Garage  | = | <u>5,850</u>   |
|   |   | \$82,050       |
| Less 5% physical & 5% functional depreciation | = | 74,050         |
| Local Multiplier                              |   | <u>x 1.35</u>  |
| Total Building value                          | = | \$99,950       |
| Land value                                    | = | <u>17,000</u>  |
| Total assessed value                          | = | \$116,950      |

Therefore, the Board rules that the correct 1988 and 1989 assessment for lot 1-H is \$116,950 and for lot 1A-3 is \$17,000.

If the taxes have been paid, the amount paid on the value in excess of \$133,950 is to be refunded with interest at six percent per annum from date of payment to date of refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Peter J. Donahue, Member

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Paul B. Franklin, Member

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Raymond J. Damour, Temporary Member

Date: August 8, 1990

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Peter F. & Ellen Engel, taxpayers; and Chairman, Selectmen of New Hampton.

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Michele E. LeBrun, Clerk

Date: August 8, 1990

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