

Jerry I. Cohen Trust for Dorothy and David Cohen

v.

Town of New Hampton

Docket Nos.: 6018-89 and 8329-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of \$76,050 (land, \$22,950; buildings, \$53,100) on a single family residence on 3.92 acres of land located on Pinnacle Hill Road (the Property). The Taxpayer failed to appear, but consistent with our Rule, TAX 102.03(g), the Taxpayer 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 assessments were 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 disproportionality.

The Taxpayer argued, in their written submittals, the assessments were excessive because:

- (1) the Property was purchased in 1987 for \$143,000, and an additional \$2,000 was expended to make it habitable;
- (2) the assessment is excessive by 20 percent for both tax years;
- (3) the 1991 revaluation assessment of \$144,400 supports the contention that the property is 20 percent overassessed; and

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(4) there are flaws in the assessments from the 1989 to 1991 tax years, i.e., no fireplaces, base house area figured incorrectly, different description of land valuation, value differences on finished basement and kitchen built-ins.

The Town agreed the assessments should be reduced to \$70,350 to correct for the fireplace and basement finish value additions as was recommended by the board's inspector.

The Town argued the revised assessment was proper because:

- (1) the previous owner anxiously wanted to sell the Property;
- (2) the Property was listed for \$179,000 originally;
- (3) the Taxpayer acquired the Property for less than market value;
- (4) the Department of Revenue Administration (DRA) ratios of 33% and 43% for 1989 and 1990 are not representative of the general level of assessment and should not be used to determine an abatement.

Board's Rulings

Based on the evidence, we find the correct assessments should be \$69,450 (land \$20,150 and building \$49,300). This assessment is ordered because:

- (1) there is some evidence that the sale may have been below market value; even if the sale is not substantially below market value and thus is some evidence of value, it is not conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980);
- (2) the DRA's ratios are not conclusive evidence of the general level of assessment;

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the ratios were not employed by the Town in assessing the Taxpayer's Property; the Taxpayer did not submit his own proportionality study or any data to support DRA's. See Milford Props., Inc. v. Town of Milford, 120 N.H. 581 (1980) and Stevens v. City of Lebanon, 122 N.H. 29 (1982);

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- (3) the sales used in the DRA's sample to determine the ratios were unrepresentatively weighted with land only sales which tend to skew the ratio lower than the actual general level of assessment in the Town;
- (4) the best evidence before the board is the board inspector's report which adjusted the land and building value (copy enclosed); and
- (5) while relatively minor, the board finds the Town's value for the paving is excessive and reduces it to \$600.

If the taxes have been paid, the amount paid on the value in excess of \$69,450 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Thirteen days subsequent to the hearing, the board received from the Taxpayer a motion to strike the comparable properties presented by the Town as the Taxpayer had not been notified within 10 days of the hearing of the use of the comparables. The board denies the Taxpayer's motion as untimely since it could have been presented to the board in writing prior to or at the time of the hearing, but wasn't. The motion would have been moot, however, as the board did not rely on the Town's comparables in arriving at its decision.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Jerry I. Cohen, Trustee for Taxpayers; and Chairman, Selectmen of New Hampton.

Dated: August 31, 1992

Melanie J. Ekstrom, Deputy Clerk

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