

Lonnie L. and Sara J. Kuhn

v.

Town of Stewartstown

Docket No.: 6051-89

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$91,600 (land, \$37,900; buildings, \$53,700) on 30 acres with a house (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Town inconsistently assessed the original dwelling and the addition;
- (2) the \$37,900 land assessment is excessive because their neighbor's 30 acres is

assessed at \$30,000; and

(3) the assessment exceeds the Taxpayers' costs, etc.

The Town failed to present a brief.

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Based on the evidence, we find the correct assessment should be \$86,200 (land, \$37,900; buildings, \$48,300). This assessment is ordered because the board concluded the building required an additional minus 10% for functional depreciation. The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

If the taxes have been paid, the amount paid on the value in excess of \$86,200 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Lonnie L. and Sara J. Kuhn, Taxpayers; and Chairman, Selectmen of Stewartstown.

Dated: September 1, 1992

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Melanie J. Ekstrom, Deputy Clerk

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