

Patrick J. Gibson and Pauline J. Gibson

v.

Town of New Boston

Docket No. 6459-89

### DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$77,150 (land, \$20,600; buildings, \$56,500) on their real estate at Bessie Leavitt Lane, consisting of a dwelling and attached garage on a 2.24-acre lot (the Property). 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 they were disproportionately taxed.

The Taxpayers argued:

- 1) the Property was purchased in May, 1988, for \$159,900;
- 2) an appraisal was done on the property in November of 1989, estimating a market value of \$158,000; and
- 3) the high assessment was due to a mechanical error in the original assessment.

The Town argued:

- 1) they compared the assessment with similar property in town; and
- 2) the Town did attempt to settle the case by an offer of abatement but it was not accepted by the Taxpayers.

Based on the evidence, we find the correct assessment should be \$56,100. This assessment is ordered because the March, 1988, \$159,900 purchase price and the April 1, 1990, \$151,400 reassessment demonstrated the \$77,150 assessment (equalized at \$227,000) was excessive. The board did, however, give weight to the Town's argument that the 34 percent equalization ratio was not right on target because the land only sales used in establishing the ratio were of a greater variance. Nonetheless, the Town should have adjusted the 1989 assessment.

In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.) We note that in making a judgment of the proper assessment, the value of the entire property, i.e., land and building, must be established.

The Town must annually review its assessments and adjust those that have declined or increased more in value than values generally changed in the Town.

RSA 75:8 states:  
The assessors and selectmen shall, in the month of April in each year,  
examine all the real estate in their respective cities and towns,  
shall reappraise all such real estate as

has changed in value in the year next preceding, and shall correct all errors that they find in the then existing appraisal . . .

See also, 73:1, 73:10, 74:1, 75:1. As stated in Appeal of Net Realty Holding Trust, 128 N.H. 795, 799 (1986), a fair and proportionate tax can only be achieved through a constant process of correction and adjustment of assessments. In yearly arriving at an assessment, the Town must look at all relevant factors. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

If the taxes have been paid, the amount paid on the value in excess of \$56,100 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul Franklin

Ignatius MacLellan, Esq.

I certify that copies of the within decision have been mailed this date, postage prepaid, to William S. Petch, Agent, representing the Taxpayers, and to the Chairman, Board of Selectmen, Town of New Boston.

February 20, 1992

Melanie J. Ekstrom, Deputy Clerk