

Joseph J. Consentino and Catherine L. Consentino

v.

Town of Deerfield

Docket No. 6718-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$70,100 (land, \$9,500; buildings, \$60,600) on a single family house on 1.0 acre of land (the Property). The Town failed to appear, but consistent with our Rule, TAX 102.03(g), the Town 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 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 disproportionally taxed.

The Taxpayers argued that the Property is overassessed because:

- (1)the Property was purchased on September 30, 1988 for \$135,000;
- (2)a reverse osmosis water system had to be installed at a cost of \$4,000 in October, 1988 because the water could not be used;
- (3)the Property slopes towards the house and the cellar fills up with water when it rains and a massive piece of ledge protrudes out in the cellar;
- (4)the kitchen is old fashioned with minimal cabinets and the floor needs replacing;
- (5)the bedroom configuration is very poor with a sloped roof and the floor slants at an angle, and in the newer portion of the house the bedrooms are contiguous;

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(6)the Property has been on the market at \$145,000 for over a year and no offers have been received; and

(7)as of April 1, 1989, the Property was worth \$120,000.

No arguments were presented by the Town.

The only other evidence received by the board was from the board's review inspector, who reported that the Property's 1990 reassessment value was \$133,000.

Based on the evidence, including the board's inspector's report, we find the correct assessment should be \$49,780. This assessment is ordered because: the purchase price in September, 1988 is close to the assessment date of April 1, 1989, and the sale is an indication of its fair market value; the Taxpayers incurred a \$4,000 expense to correct the water problem immediately after purchasing the Property; even though the Property is rated a Class III, the physical depreciation needs adjustment; and the Town's 1990 revaluation assessment established overassessment.

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.

If the taxes have been paid, the amount paid on the value in excess of \$49,780 shall be refunded with interest at six percent per annum from date paid to refund date.

The board must comment on the Town's failure to appear and failure to submit any documents whatsoever to support the assessment. The board must review individual property assessments within the context of the assessments generally in the Town. The board cannot do this if the Town does not appear or

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submit supporting material. Additionally, all of the Taxpayers from the Town who appeared at the hearings testified the Town had had minimal or no contact with

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them during the process. This dereliction has hopefully stopped, given the mandate in RSA 76:16 II that requires towns to review assessments, which became effective last year.

This board may also award costs as in the superior court. RSA 71-B:9; TAX 201.05(c). Based on the Town's failure as discussed above, the board orders the Town to pay the Taxpayers' costs of \$53.34 (filing fee \$40.00, mileage \$7.14, postage \$6.20).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Joseph J. Consentino and Catherine L. Consentino, taxpayers; and Chairman, Selectmen of Deerfield.

Melanie J. Ekstrom, Deputy Clerk

Date: March 5, 1992

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