

**James M. Buzzell and Arlene M. Buzzell**

**v.**

**Town of Deerfield**

**Docket No. 7056-89**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$53,300 (land, \$11,000; buildings, \$42,300) on a single family home on 2.0 acres of land on Old Center Road (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 the assessment was excessive because:

- (1)the Property was built in October, 1988 at a cost of \$48,000;
- (2)the Property has been damaged as a result of the Town raising the road; the damage has been partially alleviated by a ditch provided by the Town but the lowering of the culvert still produces a substantial amount of water;
- (3)as a result, moss grows on the north side of the building and the cellar is damp, producing mold and mildew; and
- (4)the proper assessment should be \$35,534.

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 \$113,500.

Docket No. 7056-89

James M. and Arlene M. Buzzell

v. Town of Deerfield

Page 2

The board is not obligated or empowered to establish a fair market value of the Property. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine whether the assessment has resulted in the taxpayers paying an unfair share of taxes. See Id. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975). Under RSA 541-A:18 V(b), the board's "experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence." See also RSA 71-B:1.

Based on the evidence, including the board's inspector's report, we find the correct assessment should be \$45,685 (land, \$9,900 and building \$35,785). This assessment is ordered because an adjustment to the Property for the water problems caused by the change in the road is warranted. Further, the 1990 revaluation assessment (\$113,500) indicated the 1989 equalized value (\$140,265) was probably excessive. Thus, the board has attempted to bring the 1989 assessment within an acceptable range by using its knowledge of the declining market from 1989 to 1990 and trending the 1990 reassessment value to 1989.

If the taxes have been paid, the amount paid on the value in excess of \$45,685 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 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 them during the process. This dereliction has hopefully stopped, given the mandate in RSA 76:16 II that requires towns to review assessments, which

Docket No. 7056-89

James M. and Arlene M. Buzzell

v. Town of Deerfield

Page 3

became effective last year.

Docket No. 7056-89

James M. and Arlene M. Buzzell

v. Town of Deerfield

Page 4

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 \$47.14 (filing fee \$40.00, mileage \$7.14).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to James M. Buzzell and Arlene M. Buzzell, taxpayers; and Chairman, Selectmen of Deerfield.

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Melanie J. Ekstrom, Deputy Clerk

Date: March 5, 1992

0007