

**David J. and Laura G. Bailey**

**v.**

**Town of Westmoreland**

**Docket No.: 7136-89**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$157,620 (land, \$58,520; buildings, \$99,100) on their real estate on Rte. 63 identified as Map 16 lot 28, consisting of a dwelling and outbuilding on 11 acres (the Property). One acre is assessed at ad valorem and 10 acres are assessed in current use. 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 el is not a living area; due to condition has only shed utility;
- (2) there is no heat on 2nd floor;

(3) there is minimal closet space; and

(4) an appraisal as of April 1, 1989 estimated its market value at \$153,000.

The Town recommended the assessment be lowered to \$146,420 to account for the size, condition and utility of the el and garage.

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**Board's Rulings**

Based on the evidence, we find the correct assessment should be \$127,320 (land, \$58,520; building, \$68,800). This assessment is ordered because the board makes an additional -20% adjustment to physical depreciation as graphically illustrated by the Taxpayers' Exhibit 1 (ten photographs).

If the taxes have been paid, the amount paid on the value in excess of \$127,320 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to David J. and Laura G. Bailey, Taxpayers; and Chairman, Selectmen of Westmoreland.

Dated: September 16, 1992

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Melanie J. Ekstrom, Deputy Clerk

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