

Mary E. Donaldson

v.

Town of Peterborough

Docket No.: 7514-89

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$198,000 (land, \$75,000; buildings, \$123,000) on a 1.0 acre lot with a single family residence (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the downstairs is still unfinished with cement walls, cement floors and has never been painted;
- (2) the house needs many repairs as listed in Taxpayer's exhibit 5 which would require a great deal of money to repair;

- (3) the Property is overassessed when compared to a neighbor, Sherry, who has invested approximately \$58,500 in improvements to his property;
- (4) the driveway and walkway are in poor condition; and
- (5) the estimated fair market value as of April 1, 1989 is \$185,000.

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The Town argued the assessment was proper because:

- (1) structurally, the house is sound and all major components are in average or good condition;
- (2) the Property is in need of cosmetic work, needs to be modernized, and is in average condition;
- (3) the Town lowered the condition of the house from average to fair and abated \$10,800 from the original assessment; and
- (4) based on the photographs, the Sherry property might be underassessed.

### **Board's Rulings**

Based on the evidence, we find the correct assessment should be \$188,100. This assessment is ordered because the board finds a 5 percent adjustment to the total value of the Property is warranted as the cost to cure the cosmetic deficiencies is greater than the adjustment made by the Town. Further, the driveway and walkway are in need of resurfacing and that should be taken into consideration. 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.

There was evidence indicating certain surrounding properties may have been

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underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayer's Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayer's assessment because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard

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yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., Id.

If the taxes have been paid, the amount paid on the value in excess of \$188,100 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

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mary E. Donaldson, Taxpayer; and Chairman, Selectmen of Peterborough.

Dated: October 12, 1992

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Melanie J. Ekstrom, Deputy Clerk

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