

Charles and Valerie Krick

v.

Town of Northfield

Docket Nos.: 7549-89 and 10233-90

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of \$81,000 (land, \$30,000; buildings, \$51,000) on a 7,425 square foot lot with a camp (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessments were 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 assessments were excessive because:

- (1) the land is overassessed when compared to neighboring properties (McGonigle, O'Brien) which are four times larger and have four times the waterfrontage;
- (2) the land slopes and the McGonigle and O'Brien properties do not;
- (3) there is a junk yard approximately 1/4 to 1/2 mile from the subject which affects

the Property's value;

(4) since the Property was purchased, a four unit apartment house was built across the street and nine more units have been approved; and

(5) the fair market value is between \$70,000 and \$72,000.

Charles and Valerie Krick

v. Town of Northfield

Docket Nos.: 7549-89 and 10233-90

Page 3

The Town argued the assessments were proper because:

- (1) larger lots have been underappraised and underassessed;
- (2) the smaller the lot, the higher the unit value;
- (3) the junkyard affects all of the properties in the area equally and does not have a direct influence over the subject any more than the other properties;
- (4) no adjustment was made for the location of the apartment building; and
- (5) the assessment is fair.

Based on the evidence, we find the correct assessments for 1989 and 1990 should be \$77,000. The board finds that the existence of the apartment building across the street and the approval for expansion warrants a five percent overall reduction to the Property. 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 underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights

Charles and Valerie Krick

v. Town of Northfield

Docket Nos.: 7549-89 and 10233-90

Page 4

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

Charles and Valerie Krick

v. Town of Northfield

Docket Nos.: 7549-89 and 10233-90

Page 5

If the taxes have been paid, the amount paid on the value in excess of \$77,000 each year 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 Charles and Valerie Krick, Taxpayers; Scott Bartlett, MMC; and Chairman, Selectmen of Northfield.

Dated: September 1, 1992

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Melanie J. Ekstrom, Deputy Clerk

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