

Bryan Kerry Woods and Janice M. Woods

v.

Town of Deerfield

Docket No. 7620-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$84,700 (land, \$14,300; buildings, \$70,400) on a single family residence on 5.04 acres of land located on Mountain 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, among other things, the assessment was excessive because:

- (1)the 1990 revaluation assessment of \$141,500 is the strongest evidence to support the request for abatement;
- (2)the 1990 revaluation assessment was at 100 percent of market value including a 12 x 12 stoop and garage doors and openers which were not present on April 1, 1989;
- (3)except for the area where the house is located, the lot is very steep;
- (4)the Town has cut swales into the western corner of the lot to provide water drainage from the road which runs along the driveway and creates a wetland area of about one-half acre;

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(5)the lot is serviced by a one-half mile narrow, winding dirt road which washes out every year or two cutting off the only access to the Property; and

(6)the Property is overassessed when compared to comparable properties submitted.

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 \$141,500.

Based on the evidence, including the board's inspector's report, we find the correct assessment should be \$60,000. This assessment is ordered because adjustments to the land for the steep drive and access limitations are warranted, 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 \$60,000 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

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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

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

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 Bryan Kerry Woods and Janice M. Woods, taxpayers; and Chairman, Selectmen of Deerfield.

Melanie J. Ekstrom, Deputy Clerk

Date: March 5, 1992

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