

Mark A. and Tammy Fanelli

v.

Town of New Ipswich

Docket No. 7669-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$187,500 (land, \$35,700; buildings, \$151,800) on their real estate on North Greenbriar Road, consisting of a dwelling on a 2.20 acre lot (the Property). The Taxpayers failed to appear, but consistent with our Rule, TAX 102.03(g), the Taxpayers were 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 in their written submittals the assessment was excessive because:

- (1)the Town did not take into account the unfinished parts of the house; and
- (2)comparable homes in the neighborhood were appraised for less.

The Town argued the assessors had been refused entry into the house and the interior had to be estimated.

Based on the evidence we find the correct assessment should be \$163,150 (land, \$35,700 and building \$127,450). This assessment is ordered because:

- (1)the board's inspector did gain entrance to the house and thus his report is the best evidence before the board; and

Docket No. 7669-89

Mark A. and Tammy Fanelli

v. Town of New Ipswich

Page 2

(2)no further adjustment is warranted as the Taxpayers did not present any credible evidence of the Property's fair market value. To carry their burden, the Taxpayers must make a showing of the Property's fair market value. This value will then be compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

If the taxes have been paid, the amount paid on the value in excess of \$163,150 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Mark A. and Tammy Fanelli, taxpayers; and Chairman, Selectmen of New Ipswich, and Scott Bartlett, MMC.

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Valerie B. Lanigan, Clerk

Date: April 9, 1992

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