

Walter Schumann and Muriel Schumann

v.

Town of Westmoreland

Docket No.: 10685-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$105,500 (land \$35,000; buildings \$70,500) on a one-acre lot with a house (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. 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) other similar, one-acre lots are not assessed the same as the Property;
- 2) the basement is divided in two by barn boards heated by a coal stove, the cement block foundation is painted white and the cement floor is covered in carpet;

- 3) comparably sized homes with extra features and in better condition are assessed at lower values;
- 4) the Property is next to a rundown campground and open to heavy traffic;
- 5) the land assessment should be \$25,000 and the building assessment should be \$65,000; and
- 6) the Town's land comparables are much larger than the subject's one acre.

The Town argued the assessment was proper because:

- 1) an error was found in the Taxpayers' assessment-record card and subsequently adjusted to address the Taxpayers' concerns;
- 2) the land is assessed consistent with two abutters (Lawson and Hall);
- 3) the residence, which is in excellent condition, has a finished room in the basement with walk out access to the back yard;
- 4) the Taxpayers' comparables are difficult to evaluate because of the variables involved; and
- 5) the Property is assessed fairly and equitably.

#### Board's Rulings

Based on the evidence, we find the correct assessment should be \$91,675 (land, \$25,000; buildings, \$66,675) for the following reasons:

(1) The board found the evidence offered by the Taxpayers to be credible. The taxpayers presented a list of land parcels in the Town that indicated the assessments on one acre parcels is \$25,000. The Town argued that the Taxpayers land was comparably assessed with the Lawson property (5.21 acres - \$31,500) and Hall property (6.30 acres - \$35,000). The Town failed to supply the board with assessment-record cards of the comparables. Further,

the Town failed to submit any sales to support the assessment. Since the Town

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was recently revalued, the Town should have submitted sales for the board's consideration. RSA 75:1 requires that assessments be in line with market value. Therefore, providing sales is essential for the board to compare the Property's assessment with fair market value and the general level of assessment in the municipality. See Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986).

(2) The Taxpayers photographs and evidence regarding two comparable houses indicates that the subject's assessment is excessive. The board finds that the value assigned for a finished basement is excessive and based upon that factor and the comparables, an additional 5 percent depreciation is warranted.

If the taxes have been paid, the amount paid on the value in excess of \$91,675 shall be refunded with interest at six percent per annum from date paid to refund date.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3.

The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Walter and Muriel Schumann, Taxpayers; and Chairman, Selectmen of Westmoreland.

Dated: May 5, 1993

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Melanie J. Ekstrom, Deputy Clerk

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