

Sean J. and Lisa D. Kenney

v.

Town of Deerfield

Docket No.: 10778-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$207,400 (land \$54,900; building \$152,500) on a 3.15-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) the building was incomplete on April 1, 1990, i.e., the exterior was unfinished and needed trim and crossbucks, the front porch, rear deck and side porch were not constructed and had only makeshift stairs, and the landscaping was not done because the final drain work was incomplete;

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- 2) the assessment-record card assessed the Property with three bedrooms when there was only two and one-half;
- 3) a September, 1989 appraisal estimated a \$186,000 value;
- 4) a neighboring lot that is very comparable to the Property had a \$186,400 assessment, which was within range of the 1989 appraisal;
- 5) similar properties were assessed at \$186,400 and \$169,100; and
- 6) the assessment increased 21.45% in one year's time, yet values have dropped 30% to 40% and the Property would sell for approximately \$145,000 today.

The Town argued the assessment was proper because:

- 1) the Property is an above-average colonial home built in 1988 on 3.15 acres and is located in an area that affords higher land values compared to the rest of the Town; and
- 2) the Property's assessment was well within range of comparable colonial homes.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$197,030. This assessment was arrived at by reducing the assessment by 5% to reflect the unfinished status of the Property as of April 1, 1990. The Taxpayers listed the items that had not been completed and based on the photographs supplied by both parties, the Property also needed site work and landscaping. The board also reached this conclusion based on its review of

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the comparable submitted by both parties. The board did not accept the Taxpayers' appraisal because the Taxpayers did not provide the assessment cards for the Deerfield comparables used in the appraisal. Additionally, the Town argued the Property's neighborhood was a superior location, and the appraisal did not make any locational adjustment.

The Taxpayers also argued the assessment had increased from past assessments. Increases from past assessments are not evidence that a taxpayer's property is disproportionally assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985).

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

The board did not rely upon the board inspector's report in any way. If the taxes have been paid, the amount paid on the value in excess of \$197,030 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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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.

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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

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Sean J. and Lisa D. Kenney, Taxpayers; and Chairman, Selectmen of Deerfield.

Dated: June 21, 1993

0008/005

Melanie J. Ekstrom, Deputy Clerk