

Thomas J. Pare and Sharon M. Pare

v.

Town of Effingham

Docket No.: 8396-90

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$143,550 (land, \$14,350, building, \$129,200) consisting of approximately 3.5 acres with dwelling (the Property). The Taxpayers and the Town waived a hearing and agree 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 they were disproportionally taxed.

The Taxpayers argued the assessment was excessive because:

- 1) the Town failed to apply the equalization ratio;
- 2) a January 5, 1990 appraisal indicated a value of \$145,000; and
- 3) the assessment is at a different rate than other Taxpayers in the Town, resulting in the Taxpayers bearing a disproportionate share of the local tax burden.

The Town argued the assessment was proper because:

- 1) the Town used the Department of Revenue's assessment manual, that was used in the 1987 revaluation;
- 2) the equalization ratio is not applied when the Town is computing assessments; the equalization ratio simply shows how the assessment compare to

sale prices in a particular year;

3) the Taxpayers' appraisal relied on properties that are not truly comparable, being located in other towns, having smaller lots, and having smaller gross living areas; and

4) the Town also testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

The board agrees with the Town's concerns about the Taxpayers' appraisal. The Board also questions some of the adjustments made in that appraisal to the comparable properties, e.g., the adjustments for functional utility. Despite its shortcomings, the Taxpayers' appraisal indicated a comparable-sales value of approximately \$145,000 and a reproduction-cost of \$166,500. After making adjustments to the Taxpayers' appraisal and reviewing the Property record card, the board concludes the Property had a fair market value on April 1, 1990 of approximately \$170,000, resulting in an assessed value of \$130,900.

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.

If the taxes have been paid, the amount paid on the value in excess of \$130,900 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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George Twigg, III, Chairman

Date: August 19, 1991  
Member

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Ignatius MacLellan, Esq.,

I certify that copies of the within decision have been mailed, postage prepaid, to Richard J. de Seve, Esq., representing Taxpayers and Selectmen, Town of Effingham.

Date: August 19, 1991

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Melanie J. Ekstrom, Deputy Clerk