

Joseph Stewart and Marlene Stewart

v.

Town of Weare

Docket No.: 8445-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$207,000 (land, \$40,700; buildings, \$166,300) on 2.59 acres and a house (the Property). 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 Town is applying the wrong square footage of the home;
- (2) there is a junk car across the street which lowers the Property value;
- (3) the Property has been on the market for 7 years without a buyer; and
- (4) an estimate of value by Dwight Keeler as of September, 1990 is in the range of \$170,000 to \$177,000.

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The Town argued the assessments were proper because:

- (1) the measurements produced by the Taxpayers are gross living area and in a mass appraisal, external measurements are used;
- (2) based on the Taxpayers' evidence of value, the Town has made an adjustment in grade;
- (3) the Town also recommends removing the storage area over the garage which would result in a revised assessment of \$191,800; and
- (4) by equalizing the Taxpayers' estimate of value for 1992, the revised assessment falls within a proper range as of April 1, 1990.

Board's Rulings

Based on the evidence, the board finds the correct assessment should be the Town's recommended revised assessment of \$191,800 (land \$42,700; building \$149,100). The board found the Town correctly reduced the grade of the home from an average plus 10 percent to an average house, and made an adjustment to the storage area. No further adjustments are warranted for the following reasons:

- (1) The Taxpayers submitted a value opinion dated March 25, 1991 from Dwight Keeler, but this opinion included no documentation that would allow the board to review the value conclusion.
- (2) The Taxpayers submitted four comparable properties which sold between January, 1991 and June, 1993, and recent competitive listings of properties in

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the Town. The assessment under appeal is as of April 1, 1990 and the comparables were not time adjusted to that date.

(3) The existence of a junk car across the street from the Property is not a cause for a tax abatement.

If the taxes have been paid, the amount paid on the value in excess of \$191,800 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph and Marlene Stewart; and the Chairman, Selectmen of Weare.

Dated: 9/10/93

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Valerie B. Lanigan, Clerk