

Walter S. and Helen T. Sikut

v.

Town of Pelham

Docket No.: 8459-90

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$85,600 (land \$24,000; building, \$61,600) on a single-family home with 4.3 acres (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 they were disproportionately taxed.

The Taxpayers argued, among other things, the assessment was excessive because:

1) an appraisal as of November 1, 1990, indicated a value of \$125,000;

- 2) the Town made various incorrect adjustments to the assessment card; and
- 3) the market has declined.

The Taxpayers also went through harassment history from 1970, which the board rules is irrelevant and has not been considered.

In its brief the Town argued the assessment was proper. The Taxpayers received a copy of the brief and thus the Town's arguments will not be *seriatim*.

Based on the evidence, we find the correct assessment should be \$78,400. 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. We note that in making a judgment of the proper assessment, the value of the entire property, i.e., land and building, must be established.

The board is not obligated or empowered to establish a fair market value of the Property. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine whether the assessment has resulted in the taxpayers paying an unfair share of taxes. See Id. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Bickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975). Based on this judgment, the board concludes the comparable sales and the photos of the Property shows the Property has been overassessed. However, the Taxpayers' argument that the

Property was only worth \$125,000 on April 1, 1990 is without merit. The Taxpayers' appraisal was flawed in several ways. For examples:

1) time adjustment needed to get values at April 1, 1990; and 2) under valued excess acreage. These flaws make us question the conclusion. The appraisal does, however, lend support to an adjustment, especially since it shows recent sales. Finally, we question how the Town went from a \$4,500 assessment on the excess acreage to a \$25,000 full value?

The board adds that it does not appear the Town has mishandled the Taxpayers' assessment or the Taxpayers' right to a review. The Town reviewed the assessment, looked at the Property and spoke to the Taxpayers. The Taxpayers disagreed with the Town, and the board's conclusion here is not a conclusion that the Town mishandled this matter. Rather, the board's opinion of value is lower than the Town's and nothing more. This should put an end to the Taxpayers' constant complaining about how the Town handled the appeal.

If the taxes have been paid, the amount paid on the value in excess of \$78,400 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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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

I certify that copies of the foregoing decision have been mailed this date, postage prepaid, to Walter S. and Helen T. Sikut, Taxpayers; and Chairman, Selectmen of Pelham.

Dated: November 6, 1991

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Melanie J. Ekstrom, Deputy Clerk

