

**Frank and Marie Mack**

**v.**

**Town of New Boston**

**Docket No.: 8504-90**

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$169,800 (land \$64,700; buildings \$105,100) on a 5.993-acre lot with a house (the Property). The Taxpayers also own, but did not appeal, three other lots in the Town with a combined, \$81,800 assessment. 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 203.09(a); 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 house is listed as having four bedrooms but really only has one as the three rooms in the basement do not have the full utility and contributory value of bedrooms on the main floor;
- (2) the solarium is only used in warmer months because it is not heated and is separated from the rest of the house by sliding doors;

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(3) a neighbor is under indictment for possible well contamination and if the subject was listed for sale, the Taxpayers would have to inform potential buyers of possible contamination; and

(4) a mortgage appraisal estimated a value of \$129,000 as of June, 1990.

The Town recently reinspected the Property and found that there was no basement under the 9 X 44 solar room resulting in a reduction in the assessment to \$165,800. The Town argued the reduced assessment was proper because:

(1) the Property is in a desirable location;

(2) there are three finished rooms in the basement assessed as finished basement area;

(3) the solarium was assessed as a 1-story frame section because it is built into the roof line and is part of the overall design of the house with a wood stove and jacuzzi;

(4) the assessment is based on comparable sales used during the revaluation; and

(5) as of 1990, the possible well contamination was not a factual matter so it was not taken into consideration.

#### Board's Rulings

Based on the evidence, we find the correct assessment should be \$156,550 (land \$64,700 and building \$91,850). This assessment is ordered because:

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(1) the Town's correction for the lack of a full basement under the solarium portion of the house is correct; and

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(2) a -10% functional depreciation should be applied to the dwelling to account for the limited utility of the basement finish and the lack of heat and seasonal utility of the solarium area portion of the house.

The board finds that no further abatement is warranted because:

- (1) the appraisal done for financing purposes submitted by the Taxpayer did not adequately adjust in the market approach for the contributory value of the finished area in the basement and did not adequately adjust for the market value of the solarium portion of the house;
  - (2) the cost approach in the Taxpayers' appraisal arrived at a conclusion of \$153,000 which generally supports the board's revised assessment;
  - (3) the Taxpayer did not submit any evidence as to the extent of the possible contamination on the neighbor's property and any effect it may have on the Taxpayers' market value;
  - (4) the Taxpayer stated that the state had conducted tests for contamination in the area over five years ago, however, the extent and findings of the tests were not presented to the board as a basis for a reduction in market value;
- and
- (5) the revised \$156,550 assessment is supported by the comparable sales submitted by the Town.

If the taxes have been paid, the amount paid on the value in excess of \$156,550 shall be refunded with interest at six percent per annum from date

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paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c and board rule Tax  
203.05, the Town shall also refund any overpayment for 1992, and until the

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Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8.  
SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Frank and Marie Mack, Taxpayers; and Chairman, Selectmen of New Boston.

Dated:  
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Valerie B. Lanigan, Clerk