

**Frank Merwin and Elizabeth Merwin**

**v.**

**Town of Tilton**

**Docket No.: 8550-90**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$172,600 (land, \$41,800; buildings, \$130,800) on a two-story dwelling located on Rt. 3, consisting of living quarters and a gun shop sales area (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).

The Taxpayers argued the Property is overassessed because:

- (1) in the last ten years, income has doubled, the cost of goods/commodities have doubled, but the cost of housing is six times greater;
- (2) income levels would yield a mortgage potential of \$500 a month and a fair

market value of the Property of \$100,000;

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- (3) a market analysis prepared by Cindy C. Murphy of Twin Rivers Realty estimated the fair market value of the Property, based on information from the Multiple Listing Service of the Lakes Region Board of Realtors, to be between \$100,000 and \$110,000;
- (4) the Property is merely an old house which is not desirable to use as a retail establishment -- there are a maze of small rooms and the basement and barn must be used for various work requiring remote observation corners and a set of buzzers and photo alarms;
- (5)The Town Fraternal Association has 3.4 acres of flat and even land at road level which is dry and useable year-round and is assessed at \$48,000. The subject land, assessed at \$41,800, has less than half of that, one-third bordering on a brook that floods each storm and the front is six feet below road level, resulting in standing water in the barn basement; and
- (6)the appraised value should be \$107,380.

The Town argued:

- (1) the market analysis prepared by Cindy Murphy consists of several errors and the information was not verified -- Town Fraternal Association had been the renter of the property and the purchase price included other consideration between the parties; Salmon Craig was a foreclosure auction from the bank; Babinski sold for \$105,000 and is assessed for \$110,000 yielding a ratio of 1.05%; Meserve sold in August, 1988 for

\$110,000 and is assessed for \$119,000;

(2) The Taxpayers' Property is a red stone foundation home, built in the

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early 1900's, and now consists of living quarters as well as a gun shop sales area;

(3) the Town made no consideration for the business and the building has been depreciated 30% for normal wear and an additional 5% for the current condition of the basement for a current assessed total value of \$153,400;

(4) comparing the Taxpayers' land assessment to Town Fraternal's land assessment shows they are assessed proportionately; and

(5) Phillips and ML Realty Trust comparables further support the accuracy and equity of the revaluation process.

A greater percentage increase in an assessment following a town-wide reassessment is not a ground for an abatement, since unequal percentage increases are inevitable following a reassessment. Reassessments are implemented to remedy past inequities and adjustments will vary, both in absolute numbers and in percentages, from property to property.

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 Brickman 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).

The Town testified the Property's assessment was arrived at using the Frank and Elizabeth Merwin v. Tilton  
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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 Taxpayers complained about the high amount of taxes they must pay. The amount of property taxes paid by the Taxpayers was determined by two factors: 1) the Property's assessment; and 2) the municipality's budget. See gen., International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor i.e., the board will decide if the Property was overassessed, resulting in the Taxpayers paying a disproportionate share of taxes. Appeal of Town of Sunapee, 120 N.H. at 217. The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

Based on the evidence, we find the correct assessment should be \$153,400. 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 municipality 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 \$153,400 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. 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

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Frank and Elizabeth Merwin, taxpayers; and Chairman, Selectmen of Tilton.

Dated: April 24, 1992

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Melanie J. Ekstrom, Deputy Clerk