

**Robert G. Howells**

**v.**

**Town of Stratham**

**Docket Nos.: 8571-90 and 10959-91 PT**

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$169,900 (land \$40,000; buildings \$129,900) and 1991 assessment of \$163,400 (land \$40,000; building \$123,400) on a one-acre lot with a house.

For the reasons stated below, the appeal for abatements is granted.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessments were excessive because:

- (1) as of the assessment dates, the Property had no market value because it could not be sold;
- (2) the Property was improperly developed--the leach field was sited incorrectly and the house was sited contrary to the Town's setback requirements; and

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(3) a lawsuit was pending against the developer.

Under board questioning, the Taxpayers agreed the Property had value, estimated at between \$154,000 to \$156,000.

The Town argued the assessments were proper because:

(1) they were arrived at using the same methodology used throughout the Town, which involved the cost approach with review based on information from local builders, and real estate brokers and with comparison to sales;

(2) the Town takes a general approach to assessing and does not necessarily look at the specific problems of each property; and

(3) the Property was certainly worth something because it was occupied and the problems could be corrected at a relatively small cost.

Under board questioning, the Town conceded an adjustment of \$6,000 to \$9,000 would be reasonable.

Based on the evidence, we find the correct assessment should be \$160,900 for 1990 and \$154,400 for 1991. 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.)

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These assessments are ordered because the board recognizes, as did the Taxpayer during his testimony, that all property no matter how encumbered should have "the present worth of future benefits" test applied to take into consideration such issues as the "cost to cure" any problems which may have a negative impact on market value.

If the taxes have been paid, the amount paid on the value in excess of \$160,900 in 1990 and \$154,400 in 1991 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. This decision also applies to 1992, pursuant to RSA 76:17-C (1993). In accordance with RSA 76:17-c (1993), the Town shall use until the Town is revalued, this ordered assesment for subsequent years with good faith adjustments under RSA 75:9, which would include an adjustment once the lot lines have been corrected.  
SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert G. Howells, Taxpayer; and Chairman, Selectmen of Stratham.

Dated: August 24, 1993

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Valerie B. Lanigan, Clerk