

Emil P. and Donna H. Drottar

v.

Town of Hollis

Docket No.: 9749-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$383,800 (land \$88,000; building \$295,800) on a 2-acre lot with a house (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 disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) the basement leaks and the foundation is cracked;
- 2) most homes in the neighborhood are class 4 or 4.5, but the Property is class 5 even though it has common-grade construction;

- 3) a home built by the same builder cost \$125,000 more to construct than the Property, yet was assessed at \$92,400 less -- it has a 3-car garage, 9-foot ceilings, marble counters and other amenities the Property does not have, yet both have the same grade-5 construction;
- 4) comparable properties are assessed at least \$100,000 less than the Property;
- 5) the Property has the highest effective tax rate; and
- 6) the market value in 1989 was \$425,000 as evidenced by an appraisal done on March 30, 1989.

The Town argued the assessment was proper because:

- 1) the Property's subdivision has the highest land value in the Town; and
- 2) the Property is assessed equitably with other properties in the subdivision.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$335,750. 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.)

The board orders this assessment because the Taxpayers submitted sufficient evidence to raise questions about the proportionality of the assessment. While the Taxpayers made many arguments, the board concluded the best evidence concerning the Property's value was the 1989 \$425,000 appraisal,

which was reduced by the 79% equalization ratio to arrive at the ordered assessment. Given the amount of evidence submitted by the Taxpayers, we would have expected the Town to submit sufficient evidence to overcome the Taxpayers' arguments. This was not done. Rather, the Town stated that it relied on the 1986 revaluation assessments. We remind the Town that under RSA 75:8, it has a continuing obligation to yearly review assessments and to make adjustments as warranted. The Taxpayers were able to locate sales closer to the 1990 assessment date, and the Town could have similarly used those sales to demonstrate why the assessment was correct. Having failed to address the Taxpayers' evidence and analysis, we concluded the best evidence before us was the appraisal.

If the taxes have been paid, the amount paid on the value in excess of \$335,750 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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

Ignatius MacLellan, Esq., Member

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CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Emil P. and Donna H. Drottar, Taxpayers; and Chairman, Selectmen of Hollis.

Dated: April 22, 1993

Melanie J. Ekstrom, Deputy Clerk

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