

**Richard S. & Laila Y. Duffy**

**v.**

**Town of New Durham**

**Docket No.: 10991-91PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$153,400 on a camp with a 9,056 square-foot lot (the Property).

For the reasons stated below, the appeal for abatement is denied. Additionally, the board has decided to order the Town to place the assessment at the original \$160,300 level, which the Town shall use for a revised tax bill for 1991. The Town may use the \$160,300 for later years if the Town is of the opinion that the \$160,300 assessment would be appropriate for those later years.

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 failed to carry their burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the assessment was increased based on an arbitrary decision to change the classification of the building (camp +10 to camp +20);
- (2) a camp +10 classification was appropriate because the Property is seasonal, not insulated, the interior is inexpensive paneling and there are no storm windows;
- (3) the classification of the camp for 1995 was returned to camp +10; and
- (4) the Property was purchased for \$200,000 in 1989 and the values have fallen significantly.

The Town argued the assessment was proper because:

- (1) a revaluation was completed in 1988; the 1991 equalization ratio was 107% and the coefficient of dispersion was 11.99%;
- (2) in 1991, values were updated Town-wide and the base rate was changed on camps;
- (3) the Taxpayers purchased the Property in 1989 for \$197,500;
- (4) the Taxpayers' application for abatement stated the Property was worth \$170,000;
- (5) the Town abated the assessment first to \$156,400 and then to the original 1988 value of \$153,400; and
- (6) the Town requests the Board find the Town's prior abatement was improper and the assessment should be increased to a fairer value.

### **Board's Rulings**

There are three issues the board must address:

- 1) the Taxpayers' appeal;
- 2) the issue of awarding the Town's costs in defending this matter; and
- 3) the issue of whether the 1991 assessment should be returned to \$160,300

which was the original 1991 assessment.

### **1991 Appeal**

While there may be debate about the board's subsequent findings, there can be no debate whatsoever that the Taxpayers had no basis at all for filing or prosecuting this appeal. First, the Taxpayers did not base this appeal on value or disproportionality. Rather, the Taxpayers were upset by the Town's change in the grade from camp +10 to camp +20. This was the entire basis of the Taxpayers' appeal. Apparently, the grade change resulted in an assessment increase of \$6,600.

The grade was changed by the Town when it performed an assessment update. In an attempt to settle this matter, the Town ultimately reduced the assessment by over \$6,600. The Taxpayers, nonetheless, continued with this appeal even though there was no basis for the appeal, especially because the Town had granted an abatement in excess of what the Taxpayers had requested.

Additionally, the Taxpayers stated the Property was worth approximately \$170,000. The equalized assessment was only \$143,400 ( $\$153,400 \div 1.07$ , the department of revenue administration's ratio). Clearly, the Taxpayers did not have any argument with the valuation on this Property, but rather they were upset with the Town's change in the grade during the update. The focus in these abatement

proceedings is whether the entire assessment, regardless of Page 4  
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how it was calculated, results in the taxpayers paying a disproportionate share of taxes. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

Based on the above, it cannot be reasonably disputed that the Taxpayers have not carried their burden of proof.

### **Costs**

The board is authorized to award costs as in the superior court. RSA 71-B:9. Under the board's rule TAX 201.39, "[t]he Board shall order a Party to pay the other Party's Costs when the Board finds the matter was frivolously brought, maintained or defended." The board rarely orders the losing party to pay the winning party's costs, but we find this appeal was frivolously brought and more importantly, frivolously continued even after the Town had provided the Taxpayers with the very adjustment that the Taxpayers had requested in terms of the bottom-line assessment.

Therefore, the Town may file an affidavit of costs pursuant to TAX 201.39 for the reasonable costs incurred by the Town in attending the hearing. No costs shall be awarded for any preparation. The costs may include fees paid to the Town's representative and mileage. The Town shall file this affidavit of costs, if it intends to do so, within fourteen (14) days of the clerk's date below, sending a copy to the Taxpayers. The Taxpayers may file an objection to the costs, within ten (10) days of receipt of the Town's submission. Upon receipt of the parties' documents, the board will issue a ruling on costs.

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### **Assessment Increase**

The board is ordering the Town to place the assessment back at the original \$160,300 amount for 1991 and to issue a new tax bill for 1991. The Town may also

issue revised tax bills for subsequent years if it determines that \$160,300 adequately represents the Taxpayers' proportional share of taxes. The Town shall, within fourteen (14) days of the clerk's date below, inform the board and the Taxpayers about the new tax bills based on this ordered assessment. The Taxpayers shall then have ten (10) days of receipt to object to these new tax bills, and the board will respond to that objection when it responds to any objection received on the award of costs.

Under RSA 76:16-a and RSA 71-B:16 II, the board has broad authority to ensure that assessments are proportional. While only two parties appear before the board -- the taxpayer and the municipality -- there is actually a silent party -- the other taxpayers in the municipality. Thus, when the board determines there has been an underassessment, it has the authority to order the proper assessment so that the other taxpayers in the town do not have to bear a disproportionate burden of the taxes. The board rarely exercises this authority. In this case, the Town's \$160,300 assessment was arrived at during an assessment update. The only reason the Town reduced the value was an attempt to avoid the time and expense of appearing at the hearing. While the board understands the Town's concern about avoiding hearings to save administrative costs, it is important for the Town to ensure the resulting assessment, even if it is a settled amount, is proportional.

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## **Conclusion**

In conclusion, the board finds as follow:

1) the Taxpayers' appeal is denied as being frivolously brought and frivolously maintained;

2) if requested by the Town, the board will order the Taxpayers to pay the Town's costs in appearing at the hearing; and

3) the board orders the Town to use the \$160,300 assessment for 1991 with the Town having the option about later years.

The following deadlines are included in the above order:

1) the Town, if it intends to seek costs, shall file an affidavit of costs within fourteen (14) days of the clerk's date below;

2) the Taxpayers' shall have ten (10) days from receipt of the affidavit of costs to file their objection;

3) the Town shall notify the board, within fourteen (14) days of the clerk's date below, about the 1991 taxes due and whether the \$160,300 assessment will be used for subsequent years; and

4) the Taxpayers shall have ten (10) days from receipt of the Town's correspondence on the taxes to file any objection.

Upon receipt of the above, the board will issue its decision. The Taxpayers and the Town shall then have thirty (30) days from the date on that decision to file any rehearing motion pursuant to RSA 541:3. This way, the board and the parties will have all of the issues finally decided before any rehearing motion is filed. Thus, if the Taxpayers want to assert that the board erred in denying the appeal or in deciding any other issue, they should raise that issue after the board issues the subsequent order.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., 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 Richard S. & Laila Y. Duffy, Taxpayers; and Chairman, Board of Selectmen of New Durham.

Dated: June 14, 1995

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Valerie B. Lanigan, Clerk

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**ORDER**

This order responds to the "Taxpayers'" July 10, 1995 letter, which the Taxpayers asked the board to treat as a rehearing motion. The board will, however, treat the letter as the Taxpayers' objection to: 1) the "Town's" statement of costs; and 2) the Town's decision concerning the 1991 taxes due. See decision page 6, which spelled out the procedures to be followed. This order also responds to the Town's June 19, 1995 letter (statement of costs) and July 10, 1995 letter (use of assessment for 1991).

We order the Taxpayers to: 1) pay the additional 1991 taxes based on the July 3, 1995 supplemental warrant (The supplemental bill shall be governed by the usual collection procedures in RSA chapter 80.); and 2) pay the Town, within 30 days of the clerk's date below, \$149.76 for costs.

Nothing in the Taxpayers' letter warrants any other orders. The Town's costs are reasonable, and the 1991 supplemental bill is consistent with the board's decision.

The letter again raised the very issue addressed at the hearing and in the decision, namely the change in the building grade. This might have raised a valid issue but for one fact--the Town had already reduced the assessment consistent with the Taxpayers' request. Thus, on the day of the hearing, the Taxpayers' only argument was moot because of the Town's abatement before the hearing. Because of the abatement, the board could not provide the Taxpayers with any relief, except for perhaps ordering a refund of the filing fee. The board obviously could not order the Town to do what it had already done on its own. The board tried to point this out to the Taxpayers at the hearing, but the Taxpayers did not, and, apparently still do not, get the point. This is a rare case where we order costs, but the facts warrant it.

As stated in the decision, the Taxpayers may now file a rehearing motion on all issues. A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this order and the June 14, 1995 decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if

the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

#### CERTIFICATE

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Richard S. and Laila Y. Duffy, Taxpayers; and Chairman, Board of Selectmen.

Dated: August 7, 1995

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Valerie B. Lanigan, Clerk