

Mark and Donna Croteau

v.

Town of Swanzey

Docket No.: 11026-91PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$137,100 (land, \$13,900; building, \$123,200) on 3.6 acres with building and attached garage (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 denied.

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 this burden.

The Taxpayers argued the assessment was excessive because:

1) the contract price for the building was \$81,000 as of August, 1990;

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- 2) an appraisal dated April, 1990 estimated the fair market value to be \$156,000; and
- 3) with the declining market, a discrepancy between the 1990 appraisal and the 1991 assessment is too high.

The Town argued the assessment was proper because:

- 1) the Taxpayers purchased the land in September 1988 for \$40,000 with improvements made since the purchase, i.e., well, septic, driveway and landscaping; and
- 2) Taxpayers' appraisal was performed in April, 1990 prior to the actual construction.

The board's inspector reviewed the assessment-record card, reviewed the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the assessment was proper as adjusted.

Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

#### Board Findings

We find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

The board denies the appeal for abatement for the following reasons:

- 1) the Taxpayers' only evidence of market value was a 1990 appraisal done for

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financing purposes based solely on plans and building specifications before

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the house was constructed; no follow-up appraisal was done after the house was completed and the grounds fully landscaped;

2) the equalization ratio as determined by the department of revenue for 1991 was 87%; and

3) applying the 1991 ratio to the assessment of \$137,100 results in an indicated market value estimate of \$157,700 ( $\$137,100 \div .87$ ); this indicated market value corresponds closely with the Taxpayers' appraisal.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) 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 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark and Donna Croteau, Taxpayers; and Chairman, Selectmen of Swanzey.

Dated: February 22, 1994

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Melanie J. Ekstrom, Deputy Clerk