

**Paul B. & Margaret H. Koehler**

**v.**

**Town of Newbury**

**Docket No.: 11061-91PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of \$154,100 on a single-family home with 5.10 acres of land and with rights to common land (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessments were 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 carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Property was purchased on June 11, 1991, for \$275,000;
- (2) a March 1991 appraisal indicated a value of \$260,000;
- (3) the house was overassessed (based on building grade) when compared to neighbors Olson's and Peterson's homes; and
- (4) the assessment was excessive by \$15,000.

The Town argued the assessment was proper because:

- (1) the subject Property was first appraised when it was under construction;
- (2) the Property was graded class 4½ and the Taxpayers' comparables were class 4 homes;
- (3) the equalization ratio was skewed because of the lake properties;
- (4) the 1991 sale of the Property was a market sale and the equalized assessment (\$290,570) is within 5% of the sales price; and
- (5) the assessment was proper.

### **Board's Rulings**

Based on the evidence, the board finds the Property's proper assessment (for all rights) to be \$145,750, which equates to a \$275,000 equalized value ( $\$145,750 \div .53$ , the department of revenue administration's (DRA) equalization ratio). This means \$100 shall be allocated to the common land with the remainder allocated to the main property.

The best evidence concerning the Property's value was the Taxpayers' June 1991 \$275,000 purchase price. Where it is demonstrated that a sale was an arm's-length market sale, the sales price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). The Town argued the Property's \$290,570 equalized value was within 5% of the \$275,000 purchase price, and thus the board should not grant the abatement. This argument has some merit, but given the Taxpayers' evidence concerning the difference in grade between the Property and the Taxpayers' two comparables, the board decided to grant the abatement. The board was not convinced that the Property warranted a 4½ grade when the comparables were only graded 4's. Thus, we decided not to apply any range in value.

Concerning the ratio, we note that in Appeal of City of Nashua, 138 N.H. 261, 266 (1994), the court held that in tax abatement cases the municipality must disclose its preferred ratio based on a good faith offering of that ratio as well as the municipality's methodology by which the ratio was computed. The Town certainly raised the issue about whether the ratio was skewed by the lake sales, but it did not submit sufficient information to comply with the requirements of the City of Nashua case. Thus, we have used the DRA's ratio.

If the taxes have been paid, the amount paid on the value in excess of \$145,750 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992 and 1993. The board understands the Town underwent a complete revaluation in 1994, and therefore, this decision shall not apply to 1994 or subsequent years.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this 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  
Page 4  
Koehler v. Town of Newbury  
Docket No.: 11061-91PT

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

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Paul B. & Margaret M. Koehler, Taxpayers; and Chairman, Board of Selectmen of Newbury.

Dated: June 7, 1995

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Valerie B. Lanigan, Clerk

0006