

**Bruce A. and Susan C. Lyman**

**v.**

**Town of Marlborough**

**Docket No.: 11198-91PT**

**DECISION**

The "Taxpayers" appeal pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$183,132 (land, \$23,732; building, \$159,400) consisting of 16.5 acres with building (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, but not based on the Taxpayers' arguments.

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).

The Taxpayers argued the assessment was excessive because:

- 1) the Property was built for \$180,000 in 1987 (land and site work \$50,000; building \$130,000); and
- 2) the square footage is incorrect as the second floor has open and unusable areas.

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The Town argued the assessment was proper because a \$2,000 adjustment was given for the cathedral ceiling.

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. The inspector recommended no change be made. 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

The board finds the Town's adjustment for the cathedral ceiling area reasonable. The purpose of assessing is to apportion a taxpayer's burden of the common tax burden relative to their real estate market value.

The Taxpayers' proposal of halving the basic square footage price (s.f.p.) of the Town's replacement cost calculation both ignores the technical aspects of the cost approach and does not relate to market value. The Town's replacement cost approach is based on the foot print of the dwelling. Thus, halving the s.f.p. does not account for the foundation, basement, ceiling, framing, and roof costs associated with the cathedral ceiling. Further, halving the s.f.p. resulting in a reduction of value of \$16,923 was not shown to be related to the cathedral ceiling's affect on market value. The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the

Property's fair market value. This value would then have been compared to the

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Property's assessment and the level of assessments generally in the Town.

See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986);

Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

In reviewing the assessment cards, the board noted the Town dropped the topography and access adjustments to the house site value following a change in assessors and during a recalculation of the acreage in current use.

The board finds those adjustments are just as applicable in 1991 as they were during the original ad valorem assessment in 1988. There are no notes on the assessment record cards to justify the change.

Therefore, the board rules the proper assessment is calculated as follows:

<u>Land</u>		
1 acre house site	$20,000 \times .90 \times .90 =$	\$ 16,200
15.5 acres in current use		<u>732</u>
		\$ 16,932
 <u>Building</u>		
		<u>\$159,400</u>
		\$176,332

If the taxes have been paid, the amount paid on the value in excess of \$176,332 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. Until the Town undergoes a general reassessment, the Town shall use the

ordered assessment for subsequent years with good-faith adjustments under RSA  
75:8. RSA 76:17-c I.

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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

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been  
mailed this date, postage prepaid, to Bruce A. and Susan A. Lyman, Taxpayers;  
and Chairman, Selectmen of Marlborough.

Dated: January 31, 1994

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Melanie J. Ekstrom, Deputy Clerk

Bruce A. Lyman and Susan C. Lyman

v.

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AMENDED DECISION

On February 2, 1994, the Town requested a reconsideration of the board's decision of January 31, 1994, stating the assessment found by the board omitted the standard \$3,000 value for water and sewer availability.

The board grants the Town's request for reconsideration, finds the \$3,000 utility value was omitted and amends the January 31, 1994 decision on page 3 in part to read:

"Therefore, the board rules the proper assessment is calculated as follows:

Land

1 acre house site	$20,000 \times .90 \times .90 =$	\$ 16,200
15.5 acres in current use		732
Utilities		<u>3,000</u>
		\$ 19,932

Building

	<u>\$159,400</u>
	\$179,332

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If the taxes have been paid, the amount paid on the value in excess of \$179,332 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a."

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
Paul B. Franklin, Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing amended decision has been mailed this date, postage prepaid, to Bruce A. & Susan A. Lyman, Taxpayers; and the Chairman, Selectmen of Marlborough.

Date:  
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Melanie J. Ekstrom, Deputy Clerk