

**Susan Keller**

**v.**

**Town of Bow**

**Docket No.: 11571-91PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$224,800 (land \$61,250; building \$163,550) on a 1.2-acre lot with a house (the Property). The Taxpayer 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 Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- 1) the size of the house and internal features are incorrect on the assessment-record card;
- 2) the land frontage is incorrect and the valuation does not take into consideration the Town's easement along the Property;

- 3) the assessment on the pool is greater than its cost new; and
- 4) the assessment is higher than neighboring parcels without the problems associated with this Property.

The Town recommended revising the assessment and argued the revised assessment was proper because:

- 1) the Town has made an adjustment to reflect the appliances;
- 2) the mudroom was calculated as one story and the story height was considered in its depreciation; and
- 3) an additional 5% topography adjustment has been applied, which brings the lot more in line with neighboring lot values.

**Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$221,300 (land \$57,750; buildings \$163,550) as recommended by the Town.

The Taxpayer argued that the Town erred in calculating the house as 2 stories instead of 1¾ stories. The board finds that the Town's calculations were appropriate based on the following conclusions.

The Town calculated the house as a 2-story and applied a 5% functional depreciation to reflect that it is not quite 2 stories. If the house was calculated as a 1¾-story without the 5% functional depreciation, the value would be \$130,000.

1¾ story	1,530 x \$81.55	=	\$124,750
1 story	176 x \$56.65	=	9,950
2 fireplaces		=	6,000
Kitchen built-ins		=	1,600
Plumbing		=	5,950
Porches/decks		=	<u>3,800</u>
TOTAL			\$152,050
$\$152,050 \times .90 \text{ (phys.dep.)} \times .95 \text{ (func.dep.)} = \$130,000$			

The Town's value of \$136,350 based on a 2-story building includes an additional 5% functional depreciation, indicating the difference in value between a 1¾ and 2-story building is 5% ( $130,000 \div 136,350 = 95\%$ ).

However, the actual living area based on the Taxpayer's statement is in excess of 1¾ (1.75) stories. The first-floor area is 1,530 square feet, and the Taxpayer stated the second-floor area is 1,287 square feet, which indicates the house is in fact 1.84 stories ( $1,287 \div 1,530 = 84\%$ ). Therefore, to appraise the house as 1.75 stories would be inappropriate. The difference between 1.75 and a 1.84 stories is 5% ( $1.75 \div 1.84 = 95\%$ ).

Therefore, the Town's use of a 5% functional depreciation on a 2-story calculation is appropriate to bring the effective area to 1.84 stories ( $130,000 \div .95 = \$137,000$  rounded).

The Taxpayer argued the Town incorrectly assessed the Property for built-in ovens and range and assessed the pool at a value greater than its cost new. The Town did make adjustments based on appliances and reduced the replacement cost by \$1,100. The Taxpayer presented no market evidence of the value of the pool and the board finds an assessment of \$1,200 to be reasonable.

The board finds, based on the evidence submitted, that the recommended 5% reduction to the land for its topography is appropriate.

No further adjustments are warranted because the Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have been compared to the 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.

If the taxes have been paid, the amount paid on the value in excess of \$221,300 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, 1993 and 1994. 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.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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 reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6. Generally, if the board denies the rehearing motion, an

Page 5  
Keller v. Town of Bow  
Docket No.: 11571-91PT

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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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 Susan Keller, Taxpayer; and Chairman, Selectmen of Bow.

Dated: February 22, 1995

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Lynn M. Wheeler, Deputy Clerk

0006