

**William J. & Barbara A. Roberts**

**v.**

**Town of New Hampton**

**Docket No.: 12332-91PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$160,500 (land \$28,200; buildings \$132,300) on a cape-style house on a 1.02 acre lot (the Property). 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 their burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Board of Taxation in a decision in 1977 determined the story height of the cape was a story and three quarter;
- (2) the Town has assessed it as a story and three quarter but has in addition valued the shed dormer separately; and
- (3) the Town has inconsistently assessed the Lockwood property by not adding an additional value for full dormer.

The Town argued the assessment was proper because:

- (1) the procedure used by the Town during the reassessment added for a dormer if the dormer increased the usable second floor area above  $\frac{3}{4}$  of the first floor area; and
- (2) the Lockwood assessment was incorrect and has been subsequently revised to be consistent with the Taxpayers' assessment.

### **Board's Rulings**

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

The Town testified its methodology was based on sales that indicated value above the  $1\frac{3}{4}$  story replacement cost for houses with a dormer that had usable floor space in excess of  $\frac{3}{4}$  of the first floor. Further, the value added for the dormer is less than the value as a two story structure.

The earlier decision by the board's predecessor, Board of Taxation, is not binding because the matter at issue is not necessarily a certain descriptive story height but rather what is the contributory market value of a certain design or style house. In 1977 the Board of Taxation apparently found the market recognized the Property as a  $1\frac{3}{4}$  story house. In 1991 based on the Town's testimony, the market was recognizing a value in excess of a  $1\frac{3}{4}$  story house, and, therefore, it is proper that this additional value for the dormer be added.

The Taxpayers did not present any market evidence that the shed dormer would not contribute a value above and beyond the  $1\frac{3}{4}$  story replacement cost. The Taxpayers needed to present this evidence of market value to carry their burden.

This value would then have been compared to the Property's assessment Page 3  
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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.

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 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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George Twigg, III, Chairman

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Paul B. Franklin, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to William J. & Barbara A. Roberts, Taxpayers; and Chairman, Board of Selectmen of New Hampton.

Dated: July 11, 1995

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Valerie B. Lanigan, Clerk

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