

**Robert M. & Mary L. Smith**

**v.**

**Town of New Hampton**

**Docket No.: 12455-91PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$211,000 (land \$126,400; buildings \$84,600) on a ranch-style house on a .45 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 meet the burden to show disproportionality or inequity.

The Taxpayers argued the assessment was excessive because:

- (1) the house is assessed unevenly relative to other similar houses in the neighborhood;
- (2) the garage is overassessed relative to other garages and relative to the unfinished second floor;
- (3) there is an undeeded right-of-way through the rear of the Property between the house and the garage;

- (4) the real estate market has declined and the high taxes affect the market value;
- (5) the Property had a market value of \$200,000 as of April 1, 1991; and
- (6) the Avery garage does have an apartment on the second floor.

The Town argued the assessment was proper because:

- (1) the square footage calculations made by the Taxpayer did not recognize the story height properly;
- (2) the garage was adjusted for the unfinished second floor and none of the Taxpayer's comparables have apartments on the second floor;
- (3) the views and location of the Property is better than the adjoining properties; and
- (4) two sales in the same neighborhood support the assessment.

### **Board's Rulings**

Based on the evidence, we find the Town supported the assessed value.

The Town adjusted the undeeded right of way in front of the Taxpayers' garage by making a ten percent reduction to the land value.

With respect to the Taxpayers' comparable garage belonging to Avery (720 square feet), the Town may have underassessed the Property given the fact that valuation was incorrectly based on a paneled heated game room, not an apartment over the garage. However, the underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two

tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., *id.* Further, the subject garage is larger than the Avery garage by 120 square feet.

The Taxpayers in their comparative analysis used incorrect square footage numbers on some of the comparables as well as the subject Property.

The Taxpayers acknowledged that they had a great view and that the house was well situated on the lot. They further acknowledged that the fair market value on April 1, 1991 was probably \$200,000, less than 4% from the equalized assessment of \$206,863 ( $\$211,000 \div 1.02$  (New Hampton's 1991 equalization ratio)). There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the Municipality's general level of assessment, represents a reasonable measure of one's tax burden. See *Wise Shoe Co. v. Town of Exeter*, 119 N.H. 700, 702 (1979).

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 Page 4  
Smith v. Town of New Hampton  
Docket No.: 12455-91PT

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 Robert M. & Mary L. Smith, 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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