

Paul A. and Diane C. Tremblay  
and  
James L. and Lois Vandeboncoeur

v.

Town of Holderness

Docket No.: 12510-91PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 adjusted assessment of \$112,000 (land only), Map 5A Lot 89 consisting of .174 acres (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.

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 carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive:

- 1) based on the shape, slope, and proximity to the road;
- 2) because, due to the Town's property line setback requirements, a building permit for a gazebo was denied; and

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3) because comparable properties indicated the Property was not equally assessed.

The Town failed to submit any written submittals and was finally defaulted.

Board Findings

Based on the evidence, the board finds the proper assessment should be \$75,000 for the following reasons:

- 1) the Town erred in its calculation of the land value i.e. the unit price of \$100,000 multiplied by the .75 condition factor equals \$75,000, not \$112,000; and
- 2) the Taxpayers' evidence of comparable assessments, specifically the assessment of Map 005A Lot 0067 (Decker) supports an assessment of \$75,000.

If the taxes have been paid, the amount paid on the value in excess of \$75,000 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.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within twenty (20) 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

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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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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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 Paul A. and Diane C. Tremblay and James L. and Lois Vandeboncoeur, Taxpayers; and Chairman, Selectmen of Holderness.

Dated: May 2, 1994

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Melanie J. Ekstrom, Deputy Clerk

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