

Donald A. and Belinda R. Hamel

v.

Town of Danville

Docket No.: 12782-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$209,450 (land \$75,500; building \$133,950) on a 2.59-acre lot with a house (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 because a June, 1992 appraisal estimated a \$151,000 fair market value.

The Town argued the assessment was proper because:

1) the assessment was the same as in 1988; it was the tax rate that increased;  
and

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2) the Town was going through a revaluation.

#### Board Findings

Based on the evidence, the board finds the proper value to be \$184,220. The board finds the best evidence of market value in 1992 to be that of the Taxpayers' appraisal. The appraiser compared the Property to three properties, all within five miles of the subject. Two of the comparables were in abutting towns. While desirable to have comparables from the same town as the subject, there is no statute prohibiting use of out-of-town comparables as long as adequate adjustments are made, if warranted. The Town questioned the arm's-length nature of comparable #1, stating it "may well be a house that was substantially completed and then stood vacant for a couple of years, caught in the declining market." However, the board was unsure whether the comment was a supposition or if verification of the sale had been sought.

Further, the Town argued that the appraiser's site value as determined in the cost approach to value was not reflective of site-development costs. This may be true. However, the appraiser considered the best indicator of value to be based on the market and made appropriate adjustments to the three sales used.

The Town submitted land sales but should have submitted sales of improved properties to support its assessment. RSA 75:1 requires that assessments be in line with market value. Therefore, providing sales is essential for the board to compare the Property's assessment with fair market value and the general level of assessment in the municipality. See Appeal of

NET Realty Trust, 128 N.H. 795, 796 (1986).

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The board finds the Taxpayers supported a fair market value of \$151,000. Neither party challenged the department of revenue administration's equalization ratio of 122% for the 1992 tax year for the Town of Danville. The board finds the Property's equalized value is \$184,220 ( $\$151,000 \times 1.22$ ).

If the taxes have been paid, the amount paid on the value in excess of \$184,220 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Donald A. and Belinda R. Hamel, Taxpayers; and Chairman, Selectmen of Danville.

Dated: January 17, 1995

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Melanie J. Ekstrom, Deputy Clerk

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