

**Jean O. Gildersleeve**

**v.**

**Town of Dunbarton**

**Docket No.: 12796-92PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$222,250 (land \$180,100; buildings \$42,150) on a 46-acre lot with a house (the Property). 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 was granted leave not to attend the hearing and submitted her arguments in writing.

The Taxpayer argued the assessment was excessive because:

- (1) the land is quite ledgy and swampy and is not suitable for subdivision;;
- (2) the house is in great need of repair;

- (3) in 1991 the Property was listed for sale at \$69,900; and
- (4) two real estate opinions in 1992 estimated the market value at \$95,000 to \$100,000.

The Town argued the assessment was proper because:

- (1) the Town has attempted to meet with the Taxpayer to review the assessment but was not able to contact the Taxpayer;
- (2) in 1993 the Town reviewed the house and increased the depreciation reducing the assessment for 1993; and
- (3) the Property has extensive road frontage.

Subsequent to the hearing the board requested its inspector to review the Property and the file a report with the board. The report was filed with the board on January 30, 1996 and copies were sent to the parties for comment. The report concluded the proper assessment should be \$151,450 (land \$109,300; buildings \$42,150). Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation. In this case, the board accepts the inspector's recommendation with the correction of adding the well and septic value to his determination.

### **Board's Rulings**

Based on the evidence, we find the correct assessment should be \$158,450 (land \$116,300; building \$42,150). This assessment is ordered because:

- 1) we find the inspector's report reasonably recognizes the proper contributory value for the road frontage of Kelsea Road given its condition and maintenance;

2) \$7,000 for the well and septic, which was apparently omitted from the board's inspector's conclusion, has been added to the land value; and

3) based on the Town's description and the board's inspector's report, the revised building valuation of \$42,150 is reasonable.

Lastly, the Taxpayer submitted two realtors' opinions of value. The board however, was unable to rely upon the opinions because they did not include a basis for value conclusions. Specifically, the realtor's opinions did not indicate what sales were used or what adjustments were made to the sales to arrive at the value conclusion. Without such information, the board and the municipality are unable to review the soundness of the value conclusions.

If the taxes have been paid, the amount paid on the value in excess of \$158,450 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, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1993, 1994 and 1995. 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 "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  
Page 4  
Gildersleeve v. Town of Dunbarton  
Docket No.: 12796-92PT

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

\_\_\_\_\_  
Paul B. Franklin, Member

\_\_\_\_\_  
Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Jean O. Gildersleeve, Taxpayer; and Chairman, Selectmen of Dunbarton.

Dated: March 11, 1996

\_\_\_\_\_  
Valerie B. Lanigan, Clerk

Jean O. Gildersleeve  
v.  
Town of Dunbarton  
Docket No.: 12796-92PT

**ORDER**

The Town filed a motion for clarification on March 13, 1996 with the board. The Town questioned which building assessment should be used, the \$42,150 figure contained in the inspector's report and the March 11, 1996 decision (Decision) or the Town's revised building assessment of \$30,700.

The board finds the \$30,700 building value is the proper building assessment. The revised assessment was presented at the hearing by the Town (see Municipality Exhibit A) and should have been included in the board's Decision. Inadvertently, the earlier building value of \$42,150 was used.

Therefore, the board amends the Decision on page 2 and page 3 to read respectively:

**"Board's Rulings**

Based on the evidence, we find the correct assessment should be \$147,000 (land \$116,300; buildings \$30,700)..."

"... If the taxes have been paid, the amount paid on the value in excess of \$147,000 shall be refunded with interest at six percent per annum from date paid to refund date..."

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
Paul B. Franklin, Member

\_\_\_\_\_  
Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Jean O. Gildersleeve, Taxpayer; and Chairman, Selectmen of Dunbarton.

Date: March 28, 1996

\_\_\_\_\_  
Valerie B. Lanigan, Clerk

0006