

**Daniel & Maria Millett**

**v.**

**Town of Durham**

**Docket No.: 12898-92-PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 adjusted assessment of \$143,800 (land, \$72,400; building, \$71,400) on 5.23 acres with building (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:

- 1) an appraisal dated October 1992 estimated a fair market value of \$105,000;
- 2) the Town does not provide sewer or water;

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3) only one-half the lot is useable, the remainder being wetlands and exposed bedrock; and

4) applying the Department of Revenue Administration's equalization ratio, a proper assessment would be \$133,350 ( $105,000 \times 1.27\% = \$133,350$ ).

The Town argued the assessment was proper because:

1) the Taxpayers' appraisal was prepared for refinancing purposes and needs to be time adjusted to April 1, 1992;

2) the equalized assessment is approximately 4.6% higher than the October 1992 appraisal trended to April 1, 1992 and is an acceptable range;

3) there were no 1992 sales of similar properties (log homes); however, there were several sales of conservative type properties close to the Property indicating the assessment is proportional; and

4) the Taxpayers' Property received a 70% discount on the excess acreage for its topography problems.

#### Board Findings

Based on the evidence, we find the correct assessment should be \$137,350.

In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted.

See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). However, the existing assessment process allocates the total value between land value and

building value. (The board has not allocated the value between land and

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building, and the Town shall make this allocation in accordance with its assessing practices.)

This assessment is based on a finding of market value as of April 1, 1992 of \$108,150. The assessment is arrived at by applying the Town's 1992 equalized ratio of 127% to the market value finding ( $\$108,150 \times 1.27 = \$137,350$ ).

The board finds the market value of the Property to be \$108,150 because:

- 1) the Taxpayers' appraisal as of October 1992 when adjusted at .5% per month back to April 1, 1992, indicated market value of \$108,150 ( $\$105,000 \times 1.03$ );
- 2) the Town conducted a reassessment in 1993 and based on the evidence submitted by the Taxpayers, the 1993 assessment was \$103,300;
- 3) adjusting this April 1, 1993 estimate of market value by 6% back to April 1, 1992 provides an indicated market value of \$109,500 ( $\$103,300 \times 1.06$ ); and
- 4) a review of the Town's three comparable sales supports a lower market value of \$108,150.

If the taxes have been paid, the amount paid on the value in excess of \$137,350 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 1993 and 1994.

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.

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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 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

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Daniel and Maria Millett, Taxpayers; and the Chairman, Selectmen of Durham.

Dated: December 23, 1994

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Melanie J. Ekstrom, Deputy Clerk

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