

**Michael and Marianne Raymond**

**v.**

**Town of Londonderry**

**Docket No.: 13578-92PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$88,600 (land \$19,500; buildings \$69,100) on a 1.83-acre lot with a house (the Property). 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 their burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Property was purchased in July 1991 for \$95,000;
- (2) when it was brought to the Town's attention that there were 4 mistakes on the assessment-record card, the corrections were made but the Town then increased the grade factor from 1.17 to 1.35;
- (3) the actions of the Town were punitive in increasing the grade factor; and
- (4) the fair market value as of April 1992 was approximately \$110,000.

The Town stated upon review, the 1992 assessment should have been abated to reflect the changes noted by the Taxpayer for a reduction of \$2,800. The Town stated the revised assessment was proper because:

- (1) the Town reviewed the expedited decisions rendered by the board in the same subdivision and the price per square foot of the subject is within the lower range;
- and
- (2) the grade factor was not increased until 1993.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$85,800 (land \$19,500; building \$66,300). This assessment is calculated as follows:

|                          |                           |
|--------------------------|---------------------------|
| Base Price (544 sq. ft.) | \$36,250                  |
| Plumbing                 | 800                       |
| Additions*               | 13,100                    |
| Other features           | <u>1,900</u>              |
| <br>                     |                           |
| Grade Factor             | <u>X 1.17</u><br>\$60,900 |
| <br>                     |                           |
| C & D Factor             | <u>X 1.10</u><br>\$67,000 |
| <br>                     |                           |
| Physical Depreciation    | <u>X .99</u>              |
| <br>                     |                           |
| Total Building           | <u><b>\$66,300</b></u>    |

**\*Additions**

| Lower         | 1st       | 2nd        | Area | Value  |
|---------------|-----------|------------|------|--------|
| Basement-unf. | 1s Frame  | 1/2s Frame | 320  | 11,200 |
|               | Wood Deck |            | 16   | 100    |
|               | Wood Deck |            | 240  | 1,200  |

| Lower | 1st          | 2nd | Area | Value  |
|-------|--------------|-----|------|--------|
|       | Fr. Overhang |     | 26   | 600    |
|       |              |     |      | 13,100 |

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The board has determined this assessment for the following reasons:

1) to correct the errors on the assessment-record card (1-1/2 baths v. 2-1/2; 20 X 14 deck v. 20 X 20; 1-car v. 2-car garage; metal v. masonry fireplace);

2) Based on the photographs of the Property, the board finds the 1/2 story framed area above the 320 square-foot section of the house should not have been removed by the Town; cathedral areas, even if not living areas, add value that needs to be recognized; therefore, this value has been added.

3) Although the Town's representative stated that the grade factor was not increased until 1993, it appears to the board that the change in grade was made at the same time the Town corrected the data entry errors. The Town denied the Taxpayers 1992 application for abatement in May 1993 stating the Property was in line with other properties in the Town. Had the Town simply corrected the errors, they would have issued a refund for the difference in the 1992 assessment. However, upon increasing the factor to 1.35 any difference in value was offset by the change in grade. Therefore, the board finds that the change in grade was applied by the Town for the 1992 tax year.

4) At the outset of the hearing the board indicated that it had issued decisions on a number of appeals from the same subdivision under its expedited procedure and would take official notice of the evidence submitted in those appeals.

The Town stated in its expedited brief that all but one of the 58 houses in the subdivision were graded B+ (1.35) with the 1.10 C&D factor to recognize the market and the style and design of the houses. The board finds that this Property does not have similar design and appeal to the other

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properties in the subdivision. It is a much simpler style and design and less pleasing to the eye. Based on the evidence submitted, specifically the photographs and the sales data, the board finds that a grade factor of 1.17 is appropriate for the subject.

If the taxes have been paid, the amount paid on the value in excess of \$85,800 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Because the board has ruled that the change in grade was applied to the 1992 tax year, 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. 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 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

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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

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Michael and Marianne Raymond, Taxpayers; and Chairman, Selectmen of Londonderry.

Dated: November 15, 1995

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Valerie B. Lanigan, Clerk

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