

**Peter J. Meister**

**v.**

**Town of Walpole**

**Docket No.: 16706-96PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$162,094 (land \$83,894 (\$120,000 with a current use credit of \$36,106); buildings \$78,200) on a single-family residence on a 36-acre lot (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was improper because:

(1) the Town increased the land value for the improved view due to a neighbor

cutting down some trees;

(2) this increase occurred as a result of the Town reviewing the Property for improvements to the buildings; and

(3) because this increase occurred not as a part of a town-wide reassessment, it was spot assessing and caused the Taxpayer to pay a disproportionate share of the tax burden.

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The Town argued the increase in the assessment was proper because:

(1) other similar properties have similar assessments attributed to the influence of a view of this type;

(2) the town has an obligation to annually review all assessments and to make adjustments if warranted; and

(3) the Town established criteria at the time of the 1992 reassessment for different condition factors for varying views; and

(4) the equalization ratios since the reassessment indicate the view factors were reasonable and market related.

#### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer failed to show the Town's assessment adjustment was illegal spot assessment. The parties admitted that value was not an issue before the board, and therefore, the board, as a matter of law, denies this appeal.

In deciding this appeal, the board must be guided by the New Hampshire Constitution, the New Hampshire statutes and New Hampshire caselaw. While the Taxpayer submitted prior board decisions on spot assessing, the board finds the guiding legal principles provided by the constitution, the statutes and the caselaw answer the present issue before the board, and thus, the board

need not review prior board decisions.

Under the New Hampshire Constitution, citizens are required to contribute their share of governmental costs. N.H. Const., pt. 1, art. 12. Such contributions (i.e., taxes) must be "proportional and reasonable [in] assessments, rates, and taxes \*\*\*." N.H. Const., pt. 2, art. 5. In Appeal of Andrews, 136 N.H. 61, 64 (1992), the court held that the above-cited constitutional provisions require that all taxpayers in a town must be assessed at the same proportion of market value. Moreover, the court stated that to establish disproportionality, a taxpayer must show that its assessment was higher than the general level of assessment in the town. The court made

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it clear that proportionality was to be judged across the entire town rather than only by property type. The Andrews decision is in accord with an early proportionality case -- Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 204-05 (1899). This same principle was enunciated in Opinion of the Justices, 123 N.H. 296, 301 (1983), where the court stated that the New Hampshire Constitution requires that all property within a particular class be proportionately assessed. It is clear from reading New Hampshire caselaw that for purposes of real estate taxes, the class is all real estate and not different types of real estate within that class. Therefore, to comply with the constitutional obligation of proportional assessment, municipalities are obligated to ensure that properties are assessed at the same general level of assessment prevailing throughout the town.

Here, the Town testified that the Taxpayer's view factor was adjusted upwards to bring the Taxpayer's Property in line with the Town's general level

of assessment. The Town also testified that the adjustment was based on the methodology used throughout the Town for views. Therefore, the Town's assessment adjustment cannot be overturned because the adjustment merely made the Taxpayers assessment proportional to others in the Town.

Further support for this conclusion can be found in the statutory obligations of municipalities in assessing properties. RSA 75:1 requires that property be assessed at market value, and the cases cited above indicate that assessments may be a proportion of market value as long as all assessment are at the same level of market value. E.g., Appeal of Andrews, 136 at 64-5. Additionally, RSA 75:8 requires municipalities to annually review assessments and to make any adjustments that are necessary to correctly assess properties.

Furthermore, municipal officials also execute the RSA 75:7 oath, which requires the selectmen to state that all taxable property was assessed at its full value. Therefore, the board finds that the Town acted according to its statutory obligations in correcting the Taxpayer's view factor.

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The Taxpayer called the Town's actions illegal spot assessing. The discussion above contradicts that assertion. Spot assessing would occur if a municipality adjusted some assessments using a different assessment standard, and those assessments were then disproportionate to the general level of assessment in the town. For example, if a town only adjusts the apartment buildings using a full-market standard when the general level of assessment in the town is less than the full market standard, that would constitute spot assessing because the resulting assessments would place the apartments in a different equalization class. This is the evil specifically disallowed in

Appeal of Andrews.

We also reiterate the standard for granting an abatement that was stated in paragraph 2 of this decision. To establish disproportionality, a taxpayer must show that the appealed property's assessment was higher than the general level of assessment in the municipality. Appeal of City of Nashua, 130 N.H. at 265. This is generally done by comparing an appealed property's market value with that property's equalized assessment. As stated earlier, the parties stated this was not a valuation issue, and therefore, the board has not made any value finding and must assume that the equalized assessment was a true reflection of the Property's value because the equalization ratio was 100% meaning assessments should equate to market value.

In summary, the board finds the New Hampshire Constitution, statutes and caselaw require the board to deny the Taxpayer's appeal.

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

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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

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Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Douglas S. Hatfield, Esq., Counsel for Peter J. Meister, Taxpayer; and Chairman, Board of Selectmen of Walpole.

Date: November 20, 1998

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Valerie B. Lanigan, Clerk

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