

Joseph L. and Margaret A. Howard, Docket No.: 17253-96PT
Estate of Priscilla L. Howard, Docket No.: 17269-96PT
James M. Howard, Docket No.: 17270-96PT

v.

Town of Derry

DECISION

The "Taxpayers," in these consolidated cases, appeal pursuant to RSA 76:16-a the following "Town" assessments.

5 Howards Grove	\$199,300
7 Howards Grove	\$133,300
119 North Shore Road	\$193,000

For the reasons stated below, the appeals are denied.

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show that the Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayers failed to carry this burden.

The Taxpayers presented certain common arguments and certain property-

specific arguments.

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Common to all "Properties," the Taxpayers argued the assessments were excessive because:

- (1) the Town has easement rights and control of the dam; the lake is drawn down excessively from October through April, leaving the area in front of the Properties just a muddy lake bed (a condition unique to the cove area);
- (2) the 1996 equalization ratio for the lakefront properties was 79% not 100%; and
- (3) in 1996, a new assessment method for waterfront properties was used by the Town on some, but not all, properties (adding a front-foot factor which was not applied to all other properties).

For 5 Howards Grove, the Taxpayers argued the assessment was excessive because:

- (1) the Property is not on a town-maintained road and thus receives no town services;
- (2) a utility easement and a culvert cut across the center of the Property;
- (3) the house was only 85% completed as of April 1996, and the Town's measurements were incorrect;
- (4) the basement is a dirt crawl space;
- (5) a January 1997 market analysis recommended a listing price range of

\$200,000 to \$225,000;

- (6) the Property's April 1996 market value was approximately \$200,000; and
- (7) the proper assessment should be 158,000.

For 7 Howards Grove, the Taxpayer argued the assessment was excessive because:

- (1) the Town corrected an error made assessing the upstairs garage (storage only), but the assessment on the garage was still too high;
- (2) the market value as of April 1996 was \$140,000 to \$150,000; and
- (3) the assessment should be \$121,740.

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For 119 North Shore Road, the Taxpayer argued the assessment was excessive because:

- (1) the dock is not of high quality construction and is overassessed given its cost to build and when compared to a neighbor's larger dock;
- (2) there is a right-of-way easement on the Property; and
- (3) the 1996 assessed value should be \$171,500.

The Town did not dispute that waterfront properties were assessed disproportionately to others. However, the Town stated these properties were, in fact, disproportionately underassessed as a class by approximately 20%. The Town also stated that members of Island Pond have determined the level of the lake for over 20 years and that many owners conclude the draw down has benefits -- less maintenance and kills the milfoil.

For 5 Howards Grove, the Town also argued the assessment was proper

because:

- (1) an appraisal, with adjustments for unfinished construction, drainage and utility easements estimated the market value to be \$267,100; and
- (2) the total living area was completely remeasured, and any errors are in the Taxpayers' favor.

For 7 Howards Grove, the Town also argued the assessment was proper because an appraisal estimated the market value to be \$206,200.

For 119 North Shore Road, the Town also argued the assessment was proper because:

- (1) the sales do not support any difference in value for being on a private versus a town road;
- (2) an appraisal estimated the market value to be \$264,500; and
- (3) the value on the dock includes its replacement cost and the right to have and maintain it.

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Board's Rulings

Based on the evidence, the board denies these appeals because the Taxpayers did not show overassessment.

1) The Taxpayers' main argument was that their Properties should have been assessed proportionately with other waterfront properties. This argument is without merit.

The Taxpayers and the Town agreed that waterfront properties that had sold near the assessment date had been assessed for approximately 80% of

market value. At the same time, the town-wide ratio was 100%, meaning properties in the Town were generally assessed at 100% of market value. The Taxpayers, however, asserted that their assessments should be lowered because their assessments were approximately market value when other waterfront assessments were at only 80% of market value.

To show disproportionality that warrants an abatement, a taxpayer is required to show the appealed property was assessed higher than the general level of assessment throughout town. Thus, a taxpayer does not show disproportionality that would qualify for an abatement by showing a certain segment of property was assessed below the general level of assessment. Abatements are only granted when property is assessed disproportionately high because such an assessment results in a taxpayer paying more than its share of taxes. The courts have held that in measuring tax burden, which is really what an abatement case is about, market value and the general level of assessment in the community are the proper yardsticks to determine proportionality not just a comparison to other similar properties.

In this case, it was clear that the Taxpayers were not overassessed when compared to the general level of assessment in the Town. Based on the ratio information concerning other waterfront properties, the Taxpayers may have been assessed higher than other waterfront properties, but that is not the standard for granting an abatement. See Appeal of Canata, 129 N.H. 399, 401 (1987) (underassessment of other properties does not prove the overassessment

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of another's property). In such a situation, the remedy would be for the Town to correct the assessments on the underassessed properties, which the Town

indicated it has been doing.

2) The Taxpayers had the burden to show what their Properties were worth and to then show that these market values were less than the equalized values.

In 1996, the town-wide ratio was 100%, meaning assessments should have approximated full market value. The value information is summarized as follows.

	<u>Assessment</u>	<u>Taxpayer's Value Opinion</u>	<u>Town's Value Opinion</u>
5 Howards Grove	\$199,300	\$200,000	\$267,100
7 Howards Grove	\$133,300	\$145,000	\$206,200
119 N. Shore Rd	\$193,000	\$171,500	\$264,500

Therefore, the Taxpayers' value opinions for 5 Howards Grove and 7 Howards Grove were consistent with the assessments. The Taxpayer's value opinion on 119 North Shore Road was less than the equalized value. The board, however, was unable to rely upon the value opinion because the Taxpayer did not submit an appraisal or any sales to support the asserted value. Without such information, the board and the municipality are unable to review the soundness of a value conclusion.

3) The Taxpayers raised several other specific concerns about their assessments -- draw down of the lake, assessment on the dock, adverse impact of easements and wet areas, and overassessment of a garage -- however, because the Taxpayers did not show that the Properties overall were overassessed, the Taxpayers are not entitled to an abatement. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985), quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

4) Because the Taxpayers failed to carry their burden of proof, these

appeals must be denied. We note, however, that the Town submitted appraisals that the Town stated supported the assessments. Without commenting on the

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specific value conclusions, the Town's appraisals generally supported the assessments.

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 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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph L., Margaret A. Howard and James M. Howard, Taxpayers; Wil Corcoran, Agent for the Town of Derry; and Chairman, Selectmen of Derry.

Date: August 4, 1998

Valerie B. Lanigan, Clerk

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Joseph L. and Margaret A. Howard

v.

Town of Derry

Docket No.: 17253-96PT

ORDER

This order responds to the Town's Motion to Compel, filed May 12, 1998.
The board denies the motion.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Valerie B. Lanigan, Clerk

CERTIFICATION

I hereby certify that the foregoing order has been sent, postage prepaid to Joseph L. and Margaret A. Howard, Taxpayers; and Chairman, Board of Assessors of Derry.

Date: June 4, 1998 _____
Valerie B. Lanigan, Clerk