

**David C. Wiley**

**v.**

**Town of Tuftonboro**

**Docket No.: 18254-99PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1999 assessment of \$183,400 (land \$84,800; buildings \$98,600) on a 2.15-acre lot with a single-family home (the "Property"). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 38 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the Property was purchased for \$126,500 in March 2000. The purchase price does not accurately reflect the condition of the Property or its market value on April 1, 1999, because of the significant amount of water damage that occurred in the fall of 1999;
- (2) the Property does not have any deeded beach rights as originally assessed by the Town;
- (3) the Property shares a well with an abutting property;
- (4) the building has been graded incorrectly when compared to the state residential appraisal manual used during the last revaluation causing that portion of the assessment to be overstated;
- (5) the Property's views are similar to those of some other nearby properties and are not the "best" in the neighborhood; and
- (6) the correct assessment should be \$147,500.

The Town offered a revised assessment-record card at the hearing and argued the revised assessment was proper because:

- (1) the views from the properties in this neighborhood add to their market value and the Property has the best view in the neighborhood;
- (2) any beach rights for this neighborhood have little contributory value; and
- (3) the Property's purchase was arranged privately, without the assistance of a real estate broker, and the selling price (\$126,500) did not reflect the Property's market value.

Prior to the hearing on March 21, 2001, the board received a motion for dismissal from the Town dated February 1, 2001. The Town contended that because the Taxpayer did not own the Property on March 1, 2000, which was the filing deadline for 1999 abatement applications, he was not eligible to request an abatement. On February 21, 2001, the board responded to the Town's motion indicating the motion for dismissal would be the first issue addressed at the

hearing.

At the hearing, the Taxpayer responded to the Town's motion by stating he had entered into a purchase and sales agreement prior to March 1, 2000, and therefore, he should have standing to appeal the assessment. RSA 76:16 states that "any person aggrieved by the assessment of a tax and who has complied with the requirements of RSA 74 may by March 1 following the date of notice of tax under RSA 76:1-a and not afterwards apply in writing on the form set out in paragraph III to the selectmen or assessors for an abatement of the tax." The Taxpayer did not have the purchase and sale agreement with him at the hearing, but the board held the record open to allow the Taxpayer to provide a copy. The board received a copy of the purchase and sales agreement which indicated it was finalized on January 31, 2000. In light of this evidence, the board finds the Taxpayer did have a legal interest in the Property as of March 1, 2000, and could be considered an aggrieved person. Therefore, the board denies the Town's motion for dismissal and has proceeded to decide the case based on its merits.

### **Board's Rulings**

The board finds the correct assessment to be \$150,800 (land \$76,300; building \$74,500).

#### **Land**

The Town submitted a revised assessment-record card at the hearing (Municipality Exhibit A) indicating a land value of \$80,550. This value was determined using the original base value as shown on the assessment-record card and adjusting it by a topography factor of .95 (instead of the original factor of .90) to capture the value of what the Town described as the "best" view in the neighborhood. The board finds that due to the Taxpayer's statements

concerning the similarity of neighborhood views and the lack of any photos depicting the view from other properties in the neighborhood, the 5% change in the topography adjustment for the view should be restored. The Town failed to show the Property's view was measurably different from other typical views in the neighborhood. Additionally, the board finds the Town's market adjustment of .90 to be adequate to recognize the Property's shared well and the lack of any deeded beach rights. Therefore, the land assessment should be calculated using the four adjustment factors shown on the Town's assessment-record cards, as follows:  $\$91,476 \times .90 \times 1.03 \times 1.00 \times .90 = \$76,300$  (rounded).

### Buildings

A review of the testimony regarding the quality of construction indicates the dwelling, including the garage, should be classified as R3 rather than R4. The Town testified the Property was the "worst property with the best view in the neighborhood." The Taxpayer testified that, on April 1, 1999, the Property was in need of a new roof, furnace and had outdated baths and kitchen. The Taxpayer submitted an extensive list of the conditions in the dwelling and the various materials needed for repair, which the Town did not refute. The board finds this to be probative evidence that the class of the house should be R3 rather than R4. The Town's revised assessment-record card, while changing the classification of the dwelling from R4 to R3 did not change the classification of the garage. The board finds this to be inconsistent assessment methodology. The board has reviewed the calculations provided by the Taxpayer and adopts them as the revised assessment for the building. In his submissions, the Taxpayer provided a revised assessment-record card showing a land value of \$72,100 and a building value of \$75,400, for a total revised assessment of \$147,500 (Taxpayer Exhibit 1). A review of the Taxpayer's

calculations show the building portion, including the garage, after reclassification as an R3 property and including depreciation, to have a value of \$74,500. The board concludes the Taxpayer transposed the numbers (\$75,400) when moving them to the revised assessment-record card.

In conclusion, the board finds the revised classification of the building and the resulting value of \$74,500 reflects the correct assessment for that portion of the Property as of April 1, 1999. The Town, on its revised assessment-record card, included some depreciation for water damage that occurred after the April 1, 1999 assessment date. This factor should not have been included in the 1999 assessment under appeal as it had not occurred on April 1, 1999. The Town should make appropriate changes to the assessment for the year 2000 to reflect the water damage that occurred subsequent to the effective date of the tax year under appeal in this case.

### **Refund**

If the taxes have been paid, the amount paid on the value in excess of \$150,800 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 2000. 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.

### **Rehearing**

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

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Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to David C. Wiley, Taxpayer; and Chairman, Board of Selectmen of Tuftonboro.

Date: June 12, 2001

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Lisa M. Moquin, Temporary Clerk

**David C. Wiley**

**v.**

**Town of Tuftonboro**

**Docket No.: 18254-99PT**

**ORDER**

This order responds to the “Town’s” July 10, 2001 letter requesting clarification on the refund due the “Taxpayer” per the board’s June 12, 2001 Decision (the “Decision”).

The matter at issue is whether or not the Town is required to pay the refund of 1999 taxes ordered by the board to the Taxpayer, given the fact that he was the legal owner of the Property for only the last few days of the tax year in question. In the Decision, the board ruled the Taxpayer is entitled to the refund. As stated in RSA 76:16 and 76:16-a, any “person aggrieved” may apply for an abatement from the Town and then, if necessary, file an appeal with the board. The Town’s motion to dismiss the appeal based on this issue was denied by the board in the Decision.

Whether the Taxpayer or his predecessor-in-interest paid the tax is immaterial to the issue of the Town’s obligation to refund the overassessment and collection of taxes with respect

to the Property. Typically, buyers and sellers negotiate between themselves about tax issues, including proration and the right to apply for an abatement of taxes paid. Such matters, however, are between these private parties and do not prejudice the Town or affect its obligation to perform lawful assessments of all property regardless of any change in ownership during the tax year.<sup>1</sup> Consequently, the Town shall comply with the Decision and disburse the full amount of the overpayment of taxes for tax year 1999, as well as any overpayment for tax year 2000, with interest at six percent per annum, to the Taxpayer.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage

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<sup>1</sup> Cf. Appeal of Town of Plymouth, 125 N.H. 141, 144-45 (1984) (taxpayers who owned partial undivided interest entitled to a tax refund and municipality's lack of standing "argument is specious"), citing Langford v. Town of Newton, 119 N.H. 470, 471 (1979) (purchaser of property after assessment date had standing to seek tax abatement; town's conclusion "that because a purchaser after the assessment date is not the person assessed, he cannot be a person aggrieved" rejected by the court).

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prepaid, to David C. Wiley, Taxpayer; and Chairman, Board of Selectmen of Tuftonboro.

Date: September 13, 2001

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Lisa M. Moquin, Clerk

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