

**John Henry Kozlik**

**v.**

**Town of Unity**

**Docket No.: 19731-02PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2002 assessment of \$109,470 (land \$37,000; buildings \$72,470) on a 3.0-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, 138 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, represented by his wife Robin A. Kozlik (“Mrs. Kozlik”), argued the assessment was excessive because:

(1) as shown in Taxpayer Exhibit 1, the Property’s assessment increased by a greater percentage (68%) than many other properties in the Town;

- (2) the Property was purchased in 1999 for \$70,000, the same value estimated in an appraisal for financing made in that year;
- (3) there is a water level problem on the Property which causes the basement to be wet year-round;
- (4) the wetness was mentioned to the Town during the abatement hearing and the Town's contract assessing firm inspected the Property twice and looked at the basement, but did not make any adjustments;
- (5) the Property's driveway is shared with a neighbor and the neighbor's logging activities have caused sections of the driveway to wash out; and
- (6) the market value of the Property was \$85,000 on April 1, 2002.

The Town argued the assessment was proper because:

- (1) the market was appreciating at an average rate of 1% per month in the relevant period;
- (2) the six comparables in Municipality Exhibit A reflect that the market values for these homes, even after adjustments for differences, are above the assessed value of the Property; and
- (3) during the hearing the contracting assessor recommended a negative 5% adjustment to the building value for the uncontrolled wet basement and a negative 10% adjustment to the land value for a shared driveway used for logging access.

Given the similarity of the cases, the parties agreed the board could take official notice of and consider the evidence presented on the same hearing date in a separate appeal (Docket No. 19688-02 PT) involving related taxpayers.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$96,590 (land \$31,750; buildings \$64,840).

The Town underwent a full revaluation effective for tax year 2002. The Taxpayer submitted, through his representative, Taxpayer Exhibit 1, a letter referring to and outlining the changes to the assessments of various properties in the Town when compared to the Property's assessment. The Taxpayer argued his assessment increased at a greater percentage than other properties. The board finds such evidence does not conclusively prove the Property is disproportionately assessed.

A greater percentage increase in an assessment following a municipal revaluation or update is not a basis for an abatement since unequal percentage increases are inevitable following such revaluations. The Town's revaluation is intended to remedy past inequities and, thus, the new assessments will vary between properties, both in absolute numbers and in percentages. Increases from past assessments are not evidence that a taxpayer's property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Town of Sunapee, 126 N.H. 214 (1985). Further, the underassessment of other properties does not prove the overassessment of the Taxpayer's Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987).

The Taxpayer submitted the realtor's listing sheet for the Property, as well as the cover page from an appraisal done for financing purposes, both of which were dated in 1999. The board gave little weight to the listing sheet as the sale of the Property occurred three years prior to the revaluation and the Taxpayer provided no information as to what rate or rates of appreciation should be applied to the selling price to give a meaningful estimate of value in 2002. Similarly, the board gave little weight to the appraisal's estimate of value because the balance of the appraisal was not submitted for the board's review. The board has no way of knowing whether the appraiser considered all the factors affecting the Property's market value.

During the hearing, Mrs. Kozlik testified the basement was wet on a year-round basis, not just seasonally, and the Town did not adjust for this factor on the assessment-record card. As some evidence of the wet condition, she submitted Taxpayer Exhibit 2, a collection of photographs, some of which depicted the wetness and the overall condition of the basement. To counter this persistent, year-round condition, the Taxpayer stated the basement currently has a sump pump that runs full time to mitigate the incoming water and at least one prior sump pump burned out due to overuse.

During its presentation, the Town stated it typically made a negative 5% adjustment during the revaluation to account for an “uncontrolled wetness” condition in a basement and recommended adjusting the Taxpayer’s dwelling assessment to reflect this condition. The Town testified the 5% obsolescence factor on the assessment-record card was for the home’s layout. The board finds the Town should also have made a 5% adjustment for the uncontrolled wet basement (as recommended by the Town); therefore, the board has increased the obsolescence depreciation factor from 5% to 10%.

Further, the board finds the physical depreciation factor for the dwelling should be increased from 10% to 15% to more accurately reflect the below average quality and overall condition of the dwelling. Some of the photographs in Taxpayer Exhibit 2 show the reverse or upside down installation of a sliding door that provides access from inside the house onto the deck as well as a deteriorating floor condition in the same area. These photographs, along with the testimony at the hearing, demonstrated the dwelling is in less than average condition for its age and that additional physical depreciation is warranted. Applying these adjustments to the building portion of the assessment results in a revised assessment for the improvements of \$64,840 (rounded).

The Taxpayer testified the Town had not recognized or adjusted the assessment for the fact the Property shared a driveway with an abutter and the abutter's use of the shared driveway for logging activities on a regular basis, coupled by the wetness in the area, has caused the driveway to wash out on several occasions and to be a continuing problem. At the hearing, the Town admitted an adjustment for the shared driveway with its water problems would have been appropriate and should have been made to the base value of the home site. The Town recommended a 10% reduction to the primary site value to account for this situation. The board finds in this case the Town's typical 10% adjustment does not sufficiently account for the condition and ongoing problems associated with the Property's shared driveway. Therefore, the board has increased the Town's recommended deduction to 15% to more accurately capture the impact of the shared driveway and its water-related problems. This adjustment reduces the value of the improved home site from \$35,000 to \$29,750. This value must then be added to the \$2,000 value of the excess rear acreage to yield a total land value assessment of \$31,750.

Combining the revised building assessment of \$64,840 with the revised land assessment of \$31,750 yields a new revised assessment of \$96,590 for the Property. The Town is ordered to make these changes and revise the assessment-record card accordingly.

If the taxes have been paid, the amount paid on the value in excess of \$96,590 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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(f). 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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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: John Henry Kozlik, 645 Lear Hill Road, Newport, New Hampshire 03773, Taxpayer; Robin Kozlik, 645 Lear Hill Road, Newport, New Hampshire 03773, representative for the Taxpayer; and Chairman, Board of Selectmen, Town of Unity - 13 Center Rd #1, Charlestown, New Hampshire 03603-7500.

Date: March 21, 2005

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Anne M. Stelmach, Clerk