**Timothy J. and Laurie A. Keyes**

**v.**

**Town of Rumney**

**Docket No.: 20053-03PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2003 assessment of $164,950 (land $98,250; buildings $66,700) on a 9.3-acre lot with a single-family home (the "Property"). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) the assessment-record card indicates "steep drop-off from road for most of frontage";

(2) the measurements taken by the Taxpayers, one of whom has experience as a foreman for a construction company, indicate an 80% drop-off and yet the Town only reflected a 50% adjustment in the assessment;

(3) the Town never considered or responded to the issue raised by the Taxpayers, despite being requested to do so;

(4) because of the steepness of the lot, additional lots cannot be developed on the Property; and

(5) the sale price was somewhat over the market value of the Property.

The Town argued the assessment was proper because:

(1) the level of assessment in the Town was 89% in tax year 2003;

(2) the Taxpayers purchased the Property for $156,000 in August, 2003 and this may have been a bargain (under market) price because the seller was entering a nursing home;

(3) the Taxpayers previously purchased and sold (at a profit) two other properties in the Town and are knowledgeable about property values;

(4) the topography adjustment of 50% was not changed from the time of the revaluation in 2002 by another appraiser; and

(5) sales of comparable properties support the assessment.

Following the hearing, Ms. Joan Gootee, one of the board's RSA 71-B:14 review appraisers, was directed by the board to perform an appraisal of the Property and file a report, copying the parties. Ms. Gootee filed a summary appraisal report ("Report") on March 25, 2005 and the parties were given 10 days to file any comments. The Town, on April 6, 2005, filed a three-page letter with attachments. The Taxpayers did not file any comments. Thus, in accordance with RSA 541-A:33, VI, the Report and the Town's comments are part of the record and considered by the board in its deliberations.

**Board's Rulings**

Based on the evidence and for the following reasons, the board finds the proper assessment to be $142,250 (land $75,550; buildings $66,700). This assessment is arrived at by keeping the building assessment at $66,700 and splitting the land assessment calculation into two components: one for the site supporting the existing dwelling and the second for the balance of the parcel that, due to its topography, is unlikely to be either physically or economically subdivided as a second lot. Consequently, the board has revised the land assessment into the two components as follows: House lot: 200' x $260 x 1.09 = basic value $56,680 x topography .90 x excess frontage .61 x undeveloped .80 = site value $24,900. Excess land and frontage 1,221' x $260 x 1.09 = basic value $346,031 x topography .30 x excess adjustment .61 x undeveloped .80 = assessed value $50,650.

The Town asserted, and the Taxpayers submitted no evidence to the contrary, the level of assessment in Rumney for tax year 2003 was 89% as determined by the department of revenue administration in its 2003 equalization survey. Applying the 89% factor to the appealed assessment of $164,950 produces an indicated market value of $185,337 ($164,950 ÷ .89). Based on all the evidence before the board, we find this indicated market value for 2003 is excessive, and thus, disproportionate.

As is often the case, there is no one absolute indication of market value, but rather a range which estimates the likely market value of a property. Based on the sales submitted by the Town and the Report, the board concludes the Property had a market value as of April 1, 2003 in the range of $150,000 to $160,000. While the board gives significant weight to the Report's overall value conclusion, we have also considered the other sales supplied by the Town and the arguments submitted by both sides.

The focus of both parties' arguments was with the assessed value of the land. Thus, much of the following findings by the board relate to that component of the Property's value. The board has reduced the land portion of the assessment as summarized above for several reasons. First, the board does not believe the lot has high subdivision potential due to its steep topography. The photographs and Taxpayers' description support that conclusion. The board also believes it is highly unlikely that market demand is such to warrant a subdivision of the undeveloped portion of the parcel with an easement access through the developed portion as suggested by the Town in its response letter.

Second, the board generally agrees with the Town's critique of the Report that the land component of the overall value and/or total assessment is higher than the $27,000 estimated in the Report. While some sales of Baker River frontage indicated the lower value, as summarized by Ms. Gootee in her Report, the board finds the Town's arguments relative to the lots' values estimated by the land residual extraction method indicates a higher contributory value for Baker River frontage property. The land assessment of $75,550, when equalized by the Town's 89% ratio, provides an indicated market value of approximately $85,000 or approximately $9,100 per acre, very similar to a number of the sales and assessment information referred by the Town in its response. The board also recognizes the Town's assessing methodology captures in the land assessment the value added to vacant lots for well, septic and other site improvements and thus an improved lot, as in this case, will have a significantly higher value than an unimproved lot.

Last, the board found no convincing evidence the Taxpayers underpaid for the Property. The Town argued the grantor was an elderly individual who may have not been knowledgeable of the market value of the Property. The board finds no evidence in the record to support that assertion. The Taxpayers testified the grantor did not enter a nursing home and was under no

undue pressure to sell. The Report utilizes the sale of the Property as one of its prime indicators of value, with no caution or mention there was any evidence the sale should not be considered an arm's-length transaction.

In conclusion, the resulting assessment of $142,250 provides an indicated market value of just under $160,000 ($142,250 ÷ .89 = $159,831). The board finds this assessment is more reflective of the physical limitations of the Property and in line with the market evidence submitted by the Town and analyzed in the Report.

If the taxes have been paid, the amount paid on the value in excess of $142,250 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, <u>not the date this decision is received</u>. 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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Paul B. Franklin, Chairman

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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:, Taxpayers Timothy J. and Laurie A. Keyes, 1991 Buffalo Road, Rumney, New Hampshire 03266; and Chairman, Board of Selectmen, Town of Rumney, Post Office Box 220, Rumney, New Hampshire 03266.

Date: April 25, 2005

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Anne M. Stelmach, Clerk

**Timothy J. and Laurie A. Keyes**

**v.**

**Town of Rumney**

**Docket No.: 20053-03PT**

**ORDER**

This order responds to the "Town's" May 16,2005 letter which the board treats as a motion for clarification ("Motion"). (TAX 201.37).

The board's April 25, 2005 decision ("Decision") relates solely to the 2003 tax year, the only year appealed by the Taxpayers. The Decision found an assessed value for 2003 of $142,250 based on a market value indication of "just under $160,000." Decision at 5. The board made no market value finding for 2004; nor is the board aware of what, if any, assessment updates the Town may have performed between 2003 and 2004. Consequently, the board cannot rule on the Town's assertion that the assessment for 2004 should be $160,000. The board reminds the parties, in particular the Town, that RSA 76:17-c and TAX 203.05 address the effect of an abatement order on subsequent years and should be considered in determining the appropriate action in subsequent years.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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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: Timothy J. and Laurie A. Keyes, 1991 Buffalo Road, Rumney, New Hampshire 03266, Taxpayers; and Chairman, Board of Selectmen, Town of Rumney, Post Office Box 220, Rumney, New Hampshire 03266.

Date: June 5, 2005

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Anne M. Stelmach, Clerk