

Kathryn L. Crawford
Docket Nos.: 10985-91PT and 13598-92PT

John R. Romanski and Patricia A. Carr
Docket No.: 10980-91PT

Robert D. King
Docket Nos.: 11128-91PT and 13601-92PT

v.

Town of Bartlett

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessments as follows.

Romanski/Carr	-	\$79,850
Crawford	-	\$94,250 (1991); \$85,800 (1992)
King	-	\$78,800 (1991); \$63,750 (1992)

For the reasons stated below, the appeals for abatement are granted.

These appeals were consolidated for hearing and decision.

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

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The Taxpayers argued the assessments were excessive based on three approaches: a) a review of the 1993 assessments; b) a review of the Town's assessment manual; and c) a review of sales in the development.

The Taxpayers submitted numerous and lengthy exhibits, which the board reviewed but will not reiterate here.

The Taxpayers asked that the assessments be the 1993 assessments \div 1.01 (the 1993 equalization ratio) \times the applicable equalization ratios (1991 and 1992).

The Taxpayers also made a request for costs, asserting the Town did not act in good faith in handling these abatement requests.

The Town had its appraisal company review the assessment and perform an analysis. Based on that analysis, the Town conceded an abatement was due, and it submitted a report with a suggested assessment. The board will not reiterate that report. The Town also argued it had acted in good faith, and thus, it asserted the request for costs should be denied.

Board's Rulings

Based on the evidence, we find the correct assessments should be as follows.

Romanski/Carr	-	\$59,850
Crawford	-	\$69,300 (1991); \$70,400 (1992)
King	-	\$59,850 (1991); \$60,800 (1992)

Under RSA 75:1, assessments must be based on market value, and the assessments must be proportionate to the general assessment level. Therefore, we have not accepted the Taxpayers' arguments and analyses that were not based on market data.

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Turning to the market data, the board finds the 1991 and 1992 market values for the King and Romanski units to be \$95,000 and the 1991 and 1992 market values for the Crawford unit to be \$110,000. The above assessments are these values reduced by the equalization ratios (63% for 1991; 64% for 1992).

The board bases its decision on the three 1990-92 sales, which indicated a market value of \$95,000 for the King and Romanski units. This value was further supported by the two 1994 sales (with appropriate adjustment for difference in finished basement area) and the 1993 assessments.

The board then reviewed the Crawford unit and concluded the market would pay approximately \$15,000 for the additional space and stand-alone nature, but any higher amount would be excessive in the market. This conclusion is based on our review of the evidence and our judgment. (The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b); see also Petition of Grimm, 138 N.H. 42, 53 (1993).) Additionally, the Taxpayers submitted sufficient evidence about the Crawford sale to raise questions about overpayment to the bank receiver.

Turning now to the Taxpayers' request for costs, this request raises two distinct issues: 1) reimbursement of filing fees under RSA 76:17-b; and 2) reimbursement for other costs. To grant the first request, we must find the incorrect assessment was "due to a clerical error, or plain and clear error of fact, and not of interpretation ***." To grant the second request, we must find the Town acted in bad faith. The board denies both requests. While the Town could have done a better job, and we assume it will do a better job in

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the future, the incorrect assessment was not "due to a clerical error, or plain and clear error of fact, and not of interpretation ***." Further, there was insufficient evidence of bad faith.

If the taxes have been paid, the amount paid on the value in excess of assessments stated above 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, the Town shall also refund any overpayment for 1992 for Romanski.

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 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert D. King, Agent for all taxpayers; and Chairman, Board of Selectmen, Town of Bartlett.

Dated: January 18, 1995

Valerie B. Lanigan, Clerk

0005

Kathryn L. Crawford

v.

Town of Bartlett

Docket Nos.: 10985-91-PT and 13598-92-PT

REHEARING MOTION

On February 2, 1995 the board received a motion for "clarification and appeal" (collectively treated as a TAX 201.37 Rehearing Motion) from the Town which argued the Taxpayer's purchase price in August 1991 formed the best evidence of market value for the Property. The Taxpayer's agent, Robert King, filed a response on February 13, 1995.

The Board denies the Town's Rehearing Motion for the following reasons.

The Taxpayer's evidence, referred to by the board on page 3 of its January 18, 1995 decision, was Mr. King's unrebutted testimony at the hearing of the Taxpayer's overpayment due to the bank's receivership of the Property, the bank's minimum price and the Taxpayer's desire to finalize her house search. This testimony was supported by her purchase price not conforming to the pattern of sales of other units, notwithstanding the Property's larger size, basement garage and stand-alone nature.

The sale price is generally one of the "best indicators of the property's value" Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988); however, it must be demonstrated the sale was an arms-length market

transaction for it to be relied on. In this case, based on Mr. King's testimony and the submitted sales data, the board found the sale was not representative of market value.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert D. King, Agent for all taxpayers; and the Chairman, Board of Selectmen, Town of Bartlett.

Dated: March 17, 1995
0009

Valerie B. Lanigan, Clerk