

**Frederick Smith, Jr.**

**v.**

**Town of New Hampton**

**Docket No.: 15044-94PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 adjusted assessment of \$132,100 (land \$40,700; buildings \$91,400) on a .64-acre lot with a house (the Property). The Taxpayer also owns, but did not appeal, another lot in the Town with a \$2,782 current-use assessment. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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). We find the Taxpayer carried his burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property was purchased in November 1994 for \$75,000;
- (2) a September 1994 bank appraisal estimated the value to be \$79,000;
- (3) the house has significant deficiencies (noted on inspection report - Ex. #1);

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(4) the Property is across the street from the community school, abuts the parking lot of the fish hatchery on one side and the fish hatchery is located behind the Property; and

(5) the market value of the Property as of April 1994 was between \$80,000 and \$85,000.

The Town argued the assessment was proper because:

(1) the Property sold for less than its market value based on a review of sales in Town; and

(2) the Taxpayer's appraisal is flawed because it uses comparables in other towns and does not appropriately consider the value of the apartment.

### **Board's Rulings**

Based on the evidence, we find the proper assessment to be \$115,700 (land, \$40,700; buildings, \$75,000) which equates to an equalized assessed value of \$94,000 rounded ( $\$115,700 \div 1.23$ ).

The Taxpayer testified the Property's purchase price was \$75,000 in November 1994. While this is some evidence of the Property's market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). Generally, where it is demonstrated that the sale was an arm's-length market sale, the sales price is one of the "best indicators of the property's value." Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988). However, in this case, while the sale appeared to meet the requirements of an arm's-length transaction, the Town submitted sales in the general neighborhood that indicated the purchase price did not correspond to the general market. Consequently, the board only gives the purchase some weight. The board has also reviewed the Town's assessment-record card,

comparables submitted by the Town and the appraisal submitted by the Taxpayer ("Bates" appraisal). The Property's improvements exhibit significant physical and functional obsolescence as noted on the assessment-record card and as testified to by the Taxpayer. The Town depreciated the main living area (which also included the additions to the barn) 20% physical/30% functional. Due to the extensive renovations that are needed and the rambling configuration of the living area, the board finds 30% physical/40% functional is appropriate. Further, the board finds the assessment on the barn, which includes an apartment, is reasonable and supported by the rental income testified to by the Taxpayer.

The board reviewed and only gave some weight to the Bates appraisal for the following reasons:

- 1) it is the board's experience that appraisers performing appraisals for banks are aware of the agreed upon sales price of the property in which they are appraising and it often influences their value conclusion;
- 2) the gross living area in the appraisal is understated even for the main living unit of the Property;
- 3) the adjustment for the apartment of \$3,000 is inadequate based on the Taxpayer's testimony of the rental received from the apartment; and
- 4) only one of the six comparable sales was in New Hampton and the locational adjustments appeared to be very minimal.

In short, the board finds that the purchase price doesn't fit the general market data but the Town also did not adequately recognize the many features of obsolescence contained in the Property. The resulting equalized

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valuation of approximately \$94,000 corresponds better with the other sales data submitted by the Town than either the Taxpayer's purchase price or the Town's original assessment.

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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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Frederick Smith, Jr., Taxpayer; and Chairman, Selectmen of New Hampton.

Date: August 27, 1996

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Valerie B. Lanigan, Clerk

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