

**Louis and Deborah Dupuis**

**v.**

**City of Berlin**

**Docket No.: 15432-94PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1994 assessment of \$90,000 (land \$9,000; buildings \$81,000) on a .27-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 the assessment was disproportionately high or was unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show that 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 Property was purchased one month after the revaluation for \$78,000;
- (2) the dwelling was not professionally built as evidenced by the poorly hung doors, minimal insulation and amateur sheetrock work;

(3) there has been some settling in the basement necessitating a significant number of additional supports;

(4) the water in the basement is caused by ledge and a spring in the back yard;

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(5) the "C+10" grade is incorrect as the structure is not "average" due to the nonprofessional construction;

(6) the correct grade factor should be "D";

(7) the site value should be reduced by 10%;

(8) the 6% obsolescence factor should be removed; and

(9) the assessment should be \$82,700.

The City argued the assessment was proper because:

(1) The "C+10" grade factor is correct and represents an "average" grade for similar properties;

(2) the 6% obsolescence factor should be retained to reflect the unfinished second story;

(3) some minor adjustment may be warranted for dampness in the basement; and

(4) a reduction of 10% should be applied to the site value.

#### **Board's Rulings**

Based on the evidence, the board finds the assessment should be \$83,000 (land \$8,300, building \$74,700). In short, this assessment is arrived at by giving the Taxpayers' purchase price some weight, revising the dwelling's grade, adjusting its depreciation and adjusting the site value for the drainage issue.

The Taxpayer testified that the Property was purchased for \$78,000

approximately one month after the revaluation. 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). However, 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 Lakeshore Estates, 130 N.H. 504, 508 (1988). In this case, the board gives the sale considerable weight because the testimony indicated the sale was properly negotiated and was arm's-length.

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The City and Taxpayer concurred that the site value should be reduced by approximately 10%. The board found this adjustment to be appropriate and the land value was reduced by this factor.

The board was provided interior and exterior photographs of the dwelling showing the finished and unfinished areas. In the unfinished areas it was evident that some of the prior work had been done by amateurs. A comment written on the assessment card stated "interior construction not too good". The testimony of the Taxpayer supported this conclusion and the City did not dispute this issue. The board finds that if "C+10" is "average", as indicated by the City, then the Property should be something less and has adjusted the grade factor to "C+5".

Additionally, the board considered the adjustments for depreciation. After revaluation, the adjustments for depreciation were 22% for "normal" and 20% for "obsolescence". Subsequent to the Taxpayers' request for an abatement, the City raised the adjustment for "normal" depreciation from 22%

to 27% and reduced the adjustment for "obsolescence" from 20% to 6%. At the hearing before the board, the City could not give any evidence or testimony to support the "normal" change. The board finds that without support this figure should return to the 22% level. The City testified that the "obsolescence" adjustment reflected the unfinished area of the second story of the dwelling and the change from 20% to 6% was warranted due to improvements that had been made by the Taxpayers. After a review of the interior photographs and testimony by the Taxpayers as to the extent of the work completed, the board finds that an appropriate "obsolescence" depreciation adjustment would be 15%.

This figure more accurately reflects the amount of work remaining to finish the second story.

If the taxes have been paid, the amount paid on the value in excess of \$83,000 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 City has undergone a general reassessment, the City

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shall also refund any overpayment for 1995 and 1996. Until the City undergoes a general reassessment, the City shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Louis and Deborah Dupuis, Taxpayers; and Chairman, Board of Assessors, City of Berlin.

Date: January 15, 1997

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Valerie B. Lanigan, Clerk

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