

Eugenia and Thomas Chagnon

v.

Town of Hollis

Docket No.: 15476-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$236,600 (land \$71,000; buildings \$165,600) on a 2-acre lot with a single-family house (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. 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 in January 1994 for \$159,000;
- (2) since the Property's purchase, substantial work was done for repairs, but as of April 1, 1994, the Property still had some defects that need to be corrected;
- (3) the Town erroneously increased the assessment;

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- (4) a December 1993 appraisal estimated a \$162,000 value;
- (5) comparable properties' average sales-to-assessment ratio was 93%, yet the Property's ratio was 149%;
- (6) comparable homes were depreciated an average 13.5% when the Property was depreciated only 5%, and superior homes had lower per-square-foot prices than the Property;
- (7) the Town's comparables were not comparable because the comparables had an average \$83.41 per-square-foot price compared to \$58.11/sf for the Property;
and
- (8) the assessment should be \$173,400 (\$170,000 market value x 1.02 equalization ratio).

The Town argued the assessment was proper because:

- (1) the Town inspected the Property, and the house was completely renovated with new paint, wallpaper and floor coverings;
- (2) the wet basement area does not have a negative impact on the Property's value;
- (3) the Taxpayers' repair costs failed to include the cost for painting, wallpapering, and replacing the ceiling and flooring;

(4) the Taxpayers' appraiser's comparables were not comparable to the Property after considering the extensive remodeling done to the Property, and one of the comparables was underassessed as a ranch when it was a 2-story gambrel; and

(5) the comparables' average \$83.41/sf supported the Property's assessment.

The board's review appraiser inspected the Property, reviewed the property-assessment card, reviewed the parties' briefs, performed an exterior inspection and filed a report with the board. This report concluded the proper value range should be from \$220,000 to \$230,000.

Following a review of the file and receipt of the review appraiser's report, the board viewed the Property with the parties. This view included a drive around the neighborhood and included an extensive interior view.

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BOARD'S RULINGS

Based on the evidence, the board finds the proper assessment to be \$190,800. The board will now review the presented evidence and the basis for our conclusion.

1) The Taxpayers purchased the Property in January 1994 for \$159,000. Certainly an arm's-length market sale of a property is one of the best value indicators. Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). However, the person proffering the sale has the burden to show that it was a qualified sale. See Society Hill at Merrimack Condominium Association v. Town of Merrimack, 139 N.H. 253 (1994). Here, the sale certainly raised questions about the assessment's correctness. But the board could not find that the sales price was conclusive of the Property's April 1, 1994 value for two

general reasons: a) the Property had been abandoned and was in disrepair, but after the sale and before April 1, 1994, the Taxpayers had done substantial improvements to the Property; and b) the sellers apparently were experiencing financial and marital distress.

Because of the incomplete nature of the parties' information concerning the sale, the board asked its review appraiser to investigate the sale. His June 26, 1997 memorandum on this point is Attachment A to this decision. Both the sellers' agent and a town official stated the sellers were getting divorced at the time of sale, which could certainly affect the marketing and eventual sales price. Additionally, the town official stated that the Property had tax liens at the time of sale, which could indicate economic distress. The Property was, however, on the market for over 150 days with a realtor, and there was an arm's-length relationship between the sellers and buyers.

Despite the sales price not being conclusive, it certainly provides some evidence that the assessment was excessive. The difference between the \$231,900 equalized assessment and the \$159,000 sales price plus approximately \$12,000 in improvements and repairs done before April 1, 1994, was over \$60,000, which demonstrates the assessment's excessiveness.

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2) The board's review appraiser estimated a property value of \$220,000 to \$230,000 as of the 1997 date of his inspection. However, Mr. Bartlett, the review appraiser, did not make adjustments for the Property's condition as of April 1, 1994, and more importantly, Mr. Bartlett did not obtain an interior inspection before preparing his report. As will be shown below, the board found the interior view to be essential to deciding this case.

3) Based on the board's review of the presented information and most importantly on the interior view of the Property, the board finds the Town overgraded the building. The Property is located in a very good neighborhood, and the house is well sited on a nicely landscaped lot. All of this made an initial positive impression on the board. However, upon inspecting the house's interior, the board was left with the impression that the interior of the house did not match, quality-wise, the neighborhood and the lot. Specifically, the interior was between average and above average. The board then reviewed the building grade information in the revenue department's assessment manual that was used for this reassessment. Attachment B to this decision is a comparison of grade 3 and grade 4, which was taken from the revenue department's manual. The board finds the Property is somewhere between grade 3 and grade 4. The Property certainly was not a grade 4½. The board decides that the Property should be assessed a grade 3½ with additional depreciation given the Property's condition as of April 1, 1994.

The board then recalculated the assessment, using grade 3½ and using a 15% physical depreciation for 1994. See Attachment C for this calculation.

The board finds the resulting \$190,800 assessment to be a more reasonable assessment than the \$236,600 appealed assessment.

4) The board could not rely upon the Taxpayers' appraisal because, as Mr. Bartlett pointed out, the appraisal did not adequately address the Property's superior location. One cannot help but be impressed with this Property's location, landscaping and siting on the lot. The appraiser did not

adequately consider this. Additionally, the board has concerns about whether

the appraiser knew of the \$159,000 purchase price, and therefore, did not perform sufficient analysis to arrive at full market value.

5) The board finds the Town's information does not overcome the above analysis. Concerning the Town's comparables, the board did not get to inspect the interior of those properties, but our exterior views of those properties lead us to conclude that the Property's interior is inferior to the comparables. We agree with the Town that the Property is in a good location, which the Town comparables recognized, but we disagree that no adjustment was warranted for building quality.

If the taxes have been paid, the amount paid on the value in excess of \$190,800 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to board rule TAX 203.05 (d), the board issues an order only for 1994. Pursuant to RSA 76:17-c II and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1995 and 1996. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I. By way of guidance for 1995 and 1996, the board would recommend that the assessment be adjusted for 1995 to \$197,200 and for 1996 to \$203,750. These adjusted assessments reflect a decrease in the depreciation given the work that the Taxpayers performed on the Property. The board's recommendation, however, is not binding.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A

reconsideration 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 reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration 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

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Eugenia and Thomas Chagnon, Taxpayers; and Chairman, Selectmen of Hollis.

Date: July 16, 1997

Valerie B. Lanigan, Clerk

ATTACHMENT B

BUILDING GRADE COMPARISON

	Grade 3 Average		Grade 4 Above Average
Foundation	Std. 8" foundation	vs	8" to 10" or stone
Exterior	Avg. Clapboard or Alum. Siding	vs	Shake, shingle or wood clapboard
Floors	Avg. wood or carpet, inexpen. ceramic tile	vs	Good grade hardwood or good grade ceramic tile
Interior	Avg. plaster or drywall Avg. workmanship	vs	Good plaster good workmanship
Millwork	Avg. trim, solid or hollow doors	vs	Well-finished trim, Birch, Mahogany or solid panel doors
Heating	FHA or FHW, no A.C.	vs	Several heating zones, possible A.C.
Kitchen	Avg. cabinets, avg. counter space	vs	Quality cabinets, built-in appliances and disposal

ATTACHMENT C

REVISED ASSESSMENT OF GRADE 3½

288 sq. ft. @ \$37.85/sq. ft.	=	\$ 10,901
32 sq. ft. @ \$37.85/sq. ft.	=	\$ 1,211
1,208 sq. ft. @ \$61.30/sq. ft.	=	<u>\$ 74,050</u>
		\$ 86,162

Additions and Deductions to Base Value

Basement area = 600 sq. ft. @ 4.80/sq. ft.	=	-\$ 2,880
32 sq. ft. @ 7.50/sq. ft.	=	-\$ 240

Fireplaces	\$ 3,600
Attic floor and stairs	\$ 800
Plumbing 6 @ 800/ea.	\$ 4,800
Porches and decks	<u>\$ 4,000</u>
Replacement Value	\$ 96,242

- 15% physical depreciation	\$ 81,806
+ Shed	\$ 768
+ Garage	<u>\$ 6,128</u>
	\$ 88,702

x local multiplier	<u>1.35</u>
Building value	\$119,748
Land value	<u>\$ 71,000</u>
Total	\$190,748