

Joanne M. Griffin

v.

Town of Amherst

Docket No.: 15831-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 adjusted assessment of \$411,600 (land \$115,000; buildings \$296,600) on a 6.45-acre lot with a single-family home (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or was unlawful, resulting in the Taxpayer 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 Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) a January 1993 construction-loan appraisal estimated a \$370,000 value for the Property;

- (2) a January 1994 loan appraisal estimated a \$380,000 value for the Property;
- (3) the Property has a radon problem;
- (4) the total land purchase and construction costs was \$358,900 (land was purchased for \$80,000);
- (5) the assessment card has some errors; and
- (6) the Property was worth \$372,000 (\$380,000-\$8,000 for radon remediation).

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The Taxpayer also commented on the Town's report.

The Town argued the assessment was proper because:

- (1) the Property is located in the best subdivision with custom-built homes;
- (2) the land was purchased in 1992, and land values appreciated from 1992 to 1994, and thus, the land was properly assessed; and
- (3) three sales supported the assessment.

The Town also commented on the Taxpayer's appraisal.

The board's inspector inspected the property, reviewed the property-assessment card, reviewed the parties' briefs and filed a report with the board. This report concluded the proper assessment should be between \$380,000 and \$395,000. The inspector's report was mailed to the parties with appropriate time for them to comment before the board finalized its deliberations. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation. In this case, the board accepts the inspector's recommendation.

Board's Rulings

Neither party challenged the Department of Revenue Administration's

equalization ratio of 100% for the 1994 tax year for the Town of Amherst.

Based on the evidence, the board finds the proper assessment to be \$392,600 (land \$115,000; buildings \$277,600).

The board arrives at this assessment by applying a .95 grade factor to the Property's building, additions and improvements and by subtracting \$6,100 to reflect the cost to install both air and water radon reduction systems in the house.

Several indications of market value were submitted in this case: 1) the Taxpayer's total cost of purchasing the land and contract to build the house was \$358,900; 2) the preconstruction loan appraisal of \$370,000 and the subsequent mortgage appraisal of \$380,000; 3) the Town's assessment of

\$411,600; and

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4) Mr. Bartlett's report including an assessment range of \$380,000 to \$395,000.

The board considered and gives some weight to all the evidence submitted. However, the board finds the most conclusive evidence is contained in Mr. Bartlett's report. Mr. Bartlett reviewed the Taxpayer's appraisal and made reasonable adjustments for living area square footages at \$50 per square foot. The board finds that this estimate is more reasonable than \$35 per square foot given the quality of the home. Further, Mr. Bartlett's comments relative to the varying quality of the interior finish in the house confirmed the board's impression from the testimony that the Town's grade of the house was slightly high. The Taxpayer's actual construction costs are also some indication that the Town's replacement cost is slightly too high. However, the board did not find the construction cost to conclusively indicate market

value because: 1) there are some architectural fees and landscaping expenses that were not part of the contract; and 2) market information contained in the Taxpayer's appraisal and as revised by Mr. Bartlett indicate the costs were conservative.

Revising the Town's assessment by using a .95 grade factor provides an indicated assessed value of \$398,700 without consideration for the radon issues raised at the hearing. The board finds the existence of radon would be a factor that would affect the Property's resale value. The market for this quality of property contains buyers who are sophisticated in their expectations and who would most likely expect that radon remediation be done prior to purchasing the Property. The Taxpayer submitted an estimate from Secondwind Environmental Co. which estimated a total air and water radon reduction proposal at approximately \$6,100. The board notes that part of the total includes reducing the water's iron and manganese levels so that the radon clarification system will work most effectively. The board did not include any reduction for a sound reduction "shell" as we are not convinced

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this is necessarily needed based on the comments in the proposal. Therefore, the revised assessment of \$398,700 further reduced by \$6,100 for radon remediation results in a proper assessment of \$392,600.

If the taxes have been paid, the amount paid on the value in excess of \$392,600 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 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.

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.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark Lutter, Agent for Joanne M. Griffin, Taxpayer; and Chairman, Selectmen of Amherst.

Date: March 12, 1997

Valerie B. Lanigan, Clerk

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ORDER

After the June 12, 1996 hearing, the board had its review appraiser review the Property and his report is included with this order. (Additional addendum to the inspector's report, i.e., photos and assessment-record cards, are contained in the board's file.) If the parties have any comment to the report, they shall file those comments within 20 days of the clerk's date below. When the 20 days has run, the board will issue the decision.

The parties are also advised to see if the report can be used to resolve this appeal through settlement.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Valerie B. Lanigan, Clerk

CERTIFICATION

I hereby certify that the foregoing order has been mailed, postage

prepaid to MARK LUTTER, Representative for Taxpayer; and Chairman, Board of Selectmen, TOWN OF AMHERST.

Dated: January 27, 1997

Valerie B. Lanigan, Clerk

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