

John W. and Josephine M. Plant

v.

Town of Merrimack

Docket No.: 16026-95PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$162,500 (land \$40,200; buildings \$122,300) on a 1.155-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 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) an April 1, 1995 appraisal valued the Property at \$116,000;
- (2) the land is inferior, having ledge and substantial slopes allowing only a

slab foundation;

(3) the house also has some problems, including settling problems, fireplace problems and some inferior components; and

(4) the Property has the second highest assessment in the subdivision for properties without waterfrontage.

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The Town argued the assessment was proper because:

(1) the Property is in a very good neighborhood;

(2) an April 1995 appraisal valued the Property at \$160,000;

(3) the assessments on the Town's comparables were consistent with the comparables' sales prices; and

(4) the assessment was consistent with other assessments in the neighborhood.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$154,900 (land \$40,200; buildings \$114,700). This assessment is based on applying an additional 5% functional depreciation to recognize several factors affecting the utility of the dwelling including slab foundation, the square footage of the second floor living area and the lack of utility of the fireplace.

The board was unable to give the Taxpayers' appraisal (Donovan appraisal) any weight because the adjustments were generally undocumented and appeared to be inadequate for the comparables used. The board finds the Donovan appraisal's comparable properties were generally of lesser quality than the Property. The adjustments for the gross living area, baths and rooms were too low given the quality of the Taxpayers' house. Further, the board

finds that the living area square footage as calculated in the Donovan appraisal did not fully account for the all the actual living area. The Town's calculations of square footage are generally more accurate and supported than Mr. Donovan's. Mr. Donovan also made significant issue of the ledge and slope problems with the lot. However, in his appraisal he made minimal or no adjustments for those factors. In short, the board in reviewing the parties' photographs finds the Taxpayers' Property to be better maintained and of better quality than the Donovan appraisal reflects.

However, in reviewing all the evidence, the board finds the Taxpayers did present factors affecting market value that would generally be recognized in the market. First, based on a review of the photographs and dimensions of

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the main portion of the house, the board concludes the second floor does not have the same square footage of living area as the first floor. The Town's assessment-record card indicates the square footage is the same. Both the dormers in the front and the rear of the house, while adding significant floor space to the second floor, do not create a second floor of the same size as the first floor. Second, the lack of a full basement is a factor the market generally recognizes both due to the lack of storage area and the ability to accommodate the mechanical systems of a house. Lastly, the lack of utility of the fireplace, while not a large portion of the building's assessment, would be a factor affecting the marketability of the Property. Therefore, based on the collective effect of these factors, the board has applied a 5% functional depreciation to the existing 9% physical to arrive at the ordered assessment.

The board notes the ordered assessment of \$154,900 when equalized by the

Town's 1995 equalization ratio of 97% ($\$154,900 \div .97 = \$159,691$)

approximately equates to the \$160,000 market value estimate of the Town's appraisal report. While the board has some reservations about the Town's lack of adjustments in its appraisal report for amenities, swimming pools of the comparables, etc., the board finds the Town's appraisal more closely equates to market value that the Donovan appraisal, and thus, in a confirmatory fashion, supports the board's finding of an additional 5% functional depreciation.

Lastly, after reviewing the evidence and the photographs, the board determined the Property is a slightly above average residential property (notwithstanding some of the issues raised by the Taxpayer), is in a good location relative to the common amenities and would have a market value in the \$150,000 to \$160,000 range rather than \$116,000 as estimated in the Donovan appraisal.

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If the taxes have been paid, the amount paid on the value in excess of \$154,900 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 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Gregory E. Michael, Esq., Counsel for John W. and

Josephine M. Plant, Taxpayers; Jay L. Hodes, Esq., Counsel for the Town of Merrimack; and Chairman, Assessors of Merrimack.

Date: May 9, 1997

Valerie B. Lanigan, Clerk

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