

Kenneth and Nancy Fontaine

v.

Town of New Ipswich

Docket No.: 16104-95PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$260,500 (land \$41,700; buildings \$218,800) on a 2-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 appraisal (Donovan appraisal) estimated the Property's market value as of April 1, 1995, at \$144,000;

(2) the Property was listed in the fall of 1995 for \$187,500, and after 143 days on the market generated no showings or offers;

(3) a second appraisal performed by Donovan as of October 1995 valued the Property at \$136,000. (This appraisal was performed in anticipation of transferring the Property to a relocation company and was discounted assuming a shorter time to the market.);

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(4) a third appraisal (Rau appraisal), which was performed for refinancing the Property, estimated a value as February 1996 of \$150,000; and

(5) the house, while relatively new, has evidence of settling, foundation cracks and improper structural supports, and these problems negatively affect the marketing of the Property.

The Town was not present at the hearing. The Town did supply copies of the assessment record cards before the hearing.

Board's Rulings

Based on the board's analysis of the evidence, the board finds the proper assessment to be \$224,400, which is based on a market finding of \$165,000. The board makes this finding for the following reasons.

1) The board spent considerable time reviewing this file. Based on the evidence, the board was convinced that the Town had overassessed the Property and that the Taxpayers' appraisers had undervalued the Property. Finding the proper market value required application of the board's judgement. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of

Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

2) A major problem with the assessment was the Town's valuation of the living space above the garage. The Town assessed this space as a raised ranch, and the Town also increased the land assessment because of the garage living space. The land assessment resulted in an influence factor of 1.5, which added \$26,600 to the assessment or \$19,500 in equalized value ($\$26,600 \text{ assessment} \div 1.36 \text{ equalization ratio}$). The Town assessed the garage and in-law apartment at \$83,900 (without any depreciation), which translates to \$61,700 in value ($\$83,900 \div 1.36 \text{ equalization ratio}$). A two-car garage has a

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value of approximately \$10,000 to \$12,000, which means the Town added approximately \$50,000 in value for the building component of the in-law apartment. This means the total value attributed by the Town to the in-law apartment was \$69,500 (additional land value of \$19,500 and additional building value of approximately \$50,000). This seemed clearly excessive to the board, especially given the covenant restrictions that govern the use of the garage.

The zoning ordinance would apparently allow the second floor of the garage to be used as an in-law apartment, a rental apartment or a business. However, the Property is subject to a set of covenants. The covenants prohibit any business use or separate rental use. The covenants arguably allow a family member to occupy the in-law apartment, but there might even be a question about this. See Covenants, paragraph 3 (lots restricted to a

single private residence for family occupancy) and paragraph 10 (lots may only be used for residential purposes and commercial activities, including any trade, business or profession, is explicitly prohibited). Given these restrictions, the contributory value of the space over the garage is greatly diminished. The board opines that the in-law apartment adds approximately \$20,000 in value, which would increase the Taxpayers' \$144,000 appraisal to approximately \$165,000.

3) The board did not accept the \$144,000 appraisal or the \$150,000 appraisal for the following reasons: a) the resulting values seemed low given the Property's overall quality, condition, market appeal and additional features such as the garage with in-law apartment; b) the board did not receive photographs of the comparables that were used in either the \$144,000 or the \$150,000 appraisals; and c) the \$144,000 appraisal was internally inconsistent. The appraisal stated the house had upgraded electric and plumbing yet appraised the quality as average. The appraisal also stated the overall condition was above average yet appraised the Property as average. In

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conclusion, while the appraisals raised questions about the correctness of the equalized assessment, the board could not accept the value conclusions on their face.

4) The Taxpayers testified that the Property was placed on the market from October 1995 to April 1996 for \$187,500. This listing resulted in only a few showings and no offers. While this marketing period may have been insufficient, the lack of any offers supports a finding that the assessment was most likely excessive.

5) Based on all of the above factors, the board concluded an adjustment

was warranted, and our best judgement was that \$165,000 fairly represented the Property's value given the information presented to us. Obviously, one of the reasons the board struggled with this case was that the Town did not present any evidence to the board and did not appear at the hearing.

The Taxpayer requested reimbursement for Mr. Donovan's cost, which the board now denies. Under TAX 201.39, the board only enters an order of costs when an appeal is frivolously maintained or defended. Given the amount of time the board spent analyzing the submitted information, the board concludes this was a difficult Property to value, and thus, the Taxpayers' request should be denied.

If the taxes have been paid, the amount paid on the value in excess of \$224,400 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

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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

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Kenneth and Nancy Fontaine, Taxpayers; and Chairman, Selectmen of New Ipswich.

Date: May 16, 1997

Valerie B. Lanigan, Clerk

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