

Michael W. Blum and Ann Gavin

v.

Town of Mason

Docket No.: 16186-95PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$207,600 (land \$19,050; buildings \$188,550) on an 8.6-acre lot (5.4 acres in current use; 3.20 acres not in current use) with a single-family house (the Property). The Taxpayers also own, but did not appeal, another lot in the Town with a \$400, current-use assessment. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or were 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 assessments were 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 house should be graded a class 4.0 and was still incomplete as of April 1995;
- (2) the area over the garage is completely unfinished;
- (3) there is no air conditioning in the house;
- (4) two comparables show the garage area to be overassessed; and
- (5) the assessed value as of April 1995 should be \$150,700.

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The Town stated the assessment included a cost for air conditioning which should be removed and the area over the garage should be assessed as unfinished and argued once these errors are corrected, the assessment will be proper because:

- (1) the home is not of average construction but is of premium grade; and
- (2) the Taxpayers have \$140,000 to \$150,000 invested in the Property without adding in the land value.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$171,900 (land \$19,050; building \$152,850). Three main issues were raised by the Taxpayers: 1) the house was not air-conditioned; 2) the house should be graded as a class 4; and 3) the assessment on the garage was excessive. At the close of the hearing, the board asked for and has received a revised assessment-record card from the Town and photographs from the Taxpayers. The Town's revised calculations indicate an assessed value of \$180,050. The Town: 1) removed the assessment for air-conditioning; 2) treated the garage separately from the second story, unfinished area; and 3) removed an \$800 charge for the drop-down stairs in the garage. The Town did not change the grade of the house but argued that the revised assessment was equitable.

The board has reviewed the evidence submitted at the hearing, the revised assessment-record card submitted by the Town and the additional photographs submitted by the Taxpayers and finds the following.

1) The assessment for air-conditioning was properly removed from the assessed value.

2) The Town assessed the garage by treating it separately from the unfinished second-story area and including the second story over the garage as a 1-story 676 square foot area. The Town then made a reduction for it being unfinished and removed an adjustment of \$800 for the drop-down stairs in the garage to access the unfinished area from the garage. The board finds a more appropriate method for assessing the garage is to include it as a part of the

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living area adjusting for slab foundation, unfinished and lack of heat. The Town stated they relied on the Department of Revenue Administration's (DRA) Residential Appraisal Manual and the board has relied on the cost data in the April 1, 1981 revised manual in making the adjustments that follow. Note: the board also added a value for the 156 foot garage entry-way which was not included on the Town's assessment-record card. This method yields a garage value that is more reasonable for the Property.

<u>Story</u>	<u>Sq. Ft.</u>	<u>Price</u>	<u>Value</u>	<u>Base Cost</u>
2.00	504	\$76.00	\$38,304	
1.75	816	\$66.05	\$53,897	
1.00	225	\$45.25	\$10,181	
2.00	676	\$76.00	\$51,376	
				\$153,758

Adds and Deducts to Base Cost

Slab Foundation	-	676' x 4.80	-	3,250
Heat			-	6,150

Fireplace	+ 4,200	
Unfinished (Garage) - 1,352' x 14.10	-19,050	
Kitchen	+ 1,150	
Plumbing	+ 6,400	
Garage Entry - 156'	+ 2,850	
		\$139,900
		<u>x .95</u> Func. Dep.
		\$132,905
		<u>x 1.15</u> Local Multiplier
		\$152,850
		<u>\$ 19,050</u> Land
		\$171,900 Total

3) Upon review of the evidence and photographs, the board finds the grading of the home as a class 4.5 is reasonable. The board's recalculations above, by pricing the home as a grade 4.5 with a 2-story garage, indicates an assessed value of the home at \$152,850 which when equalized by the DRA ratio of .82 for the Town for the 1995 tax year indicates an estimated market value of the home (excluding land) of \$186,400. The Taxpayers stated that they had invested approximately \$150,000 in the construction of the Property in addition to sweat equity. No other evidence relating to costs and no appraisals were submitted by the Taxpayers.

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4) The revised assessment of \$171,900 includes land in current use. To equate this assessment to market value, the board has reviewed the ad valorem assessment of the land in current use. The assessment-record card indicates a total assessed value of the land (before consideration of current use) of \$26,004.38. This number, when added to the board's building value of \$152,850 indicates a total value of \$178,554 or an indicated market value of the Property of \$218,100. This value appears to be reasonable based on the evidence submitted and the board's judgment and experience. The board is not

obligated or empowered to establish a fair market value of the Property.

Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980).

Rather, we must determine whether the assessment has resulted in the Taxpayers paying an unfair share of taxes. See Id. 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).

If the taxes have been paid, the amount paid on the value in excess of \$171,900 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

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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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Michael W. Blum and Ann Gavin, Taxpayers; and Chairman, Selectmen of Mason.

Date: April 29, 1997

Valerie B. Lanigan, Clerk

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