

Elizabeth C. Mullen

v.

Town of Pittsfield

Docket No.: 16704-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$172,539 (land \$74,600; buildings \$113,200; current-use credit \$15,261) on a 19.26-acre (18 acres in current use) 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 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) the Property was built as a seasonal, summer residence and has not been

winterized;

(2) some living areas are unheated, including the second floor;

(3) the Property has substantial physical problems as shown by the photographs;

(4) there are some areas that have lead paint on exposed surfaces;

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(5) the Property was purchased for \$90,000 from the FDIC, and this price is legally required to be at least 90% of the market value; and

(6) a January 1994 appraisal valued the Property at \$125,000.

The Town argued the assessment was proper because:

(1) the Property has many quality features found in older colonial homes such as wide-board floors and pegged beams;

(2) the view from the Property is expansive;

(3) the Taxpayer's purchase from the FDIC cannot be relied on;

(4) the Taxpayer's appraisal was flawed, especially given the gross adjustments to the comparables; and

(5) the current assessment was correct and reflected the general level of assessment for similar properties throughout the Town.

The board's review appraiser inspected the property, reviewed the property-assessment card, reviewed the parties' briefs and filed a report with the board. This report concluded the market value for the Property (including all the land) should be \$175,000, which equates to a \$151,000 assessment (with adjustments for current use and due to the equalization ratio).

Note: The review appraiser's report is not an appraisal. 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 review

appraiser's recommendation.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$139,589.

After reviewing all of the parties' evidence, the board decided to have its review appraiser review the file, inspect the Property and file a report with the board. The board finds this report to be the best indication of the Property's value. Therefore, the board adopts Mr. Bartlett's report with an adjustment for the lack of heat in most of the building.

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The assessment-record card indicated that only the 41' x 20' section of the house was heated, and this was confirmed by the Taxpayer. Using the Marshall & Swift, Residential Cost Handbook, § B at B-20 (1995), the board calculates that it will cost approximately \$12,000 to provide heat to the remainder of the building. (4,180 square feet for a total building size less 820 square feet of heated area equals 3,360 of unheated area. The cost of heat installation is approximately \$3.47 per square foot (\$3.18 x 1.10 multiplier for oil heat). 3,360 square feet x \$3.47 per square foot equals approximately \$12,000.) Subtracting this \$12,000 from the review appraiser's \$175,000 market finding results in a \$163,000 market value.

The assessment calculation is as follows.

Board Appraiser's Market Value	\$175,000
Heat Adjustment	<u>- 12,000</u>
Adjusted Market Value	\$163,000
Equalization Ratio	<u>x .95</u>
Assessment	\$154,850
CU Credit	<u>- 15,261</u>
Final Assessment	\$139,589

The board did not accept the Taxpayer's purchase price because it was an FDIC sale and because of the other unique attributes of the sale, including that the Taxpayer, at the time of purchase, already had an interest in the Property. Moreover, the board did not accept the Taxpayer's appraisal because it was performed for a bank in preparation for a foreclosure. We find the board review appraiser's report to be a more reliable value indicator.

The board also finds the Town did not adequately support the assessment.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$139,589 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 1997. 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.

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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

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 Kathleen M. Mullen, Agent for Elizabeth C. Mullen, Taxpayer; and Chairman, Selectmen of Pittsfield.

Date: June 25, 1998

Valerie B. Lanigan, Clerk

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