

John Keith Markley and Pamela L. Markley

v.

Town of Campton

Docket No.: 16867-96PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$146,850 (land \$47,000; buildings \$99,850) on a 2.35-acre lot with a single-family house (the Property). The Taxpayers also own, but did not appeal, a .31-acre lot assessed for \$1,900. 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) Clauson & Atwood Law Offices rendered a February 21, 1997 opinion that

the Property was unmarketable because it does not have clear title;

- (2) a May 1998 opinion letter from Armstrong Appraisal & Consulting estimates a 50% reduction in value due to the Property's poor liquidity, risk of litigation and liability;
- (3) the Taxpayers must maintain the roadway to the Property; and
- (4) the value should be no higher than \$50,000.

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The Town argued the assessment was proper because:

- (1) in June 1997, another property (Snape) in the development sold for \$300,000 without any restrictions;
- (2) the Town plowed the road up to the Taxpayers' Property;
- (3) one of the original developers is attempting to cure the problems and has an agreement to finish and pave the road; and
- (4) the assessment has been adjusted by 10% which is appropriate given the time involved.

Prior to making a decision on this Property, the board asked its review appraiser (Mr. Bartlett) to review the assessment-record card, the evidence submitted at the hearing and the file. The board further asked Mr. Bartlett to inspect and photograph the Property and file a report with the Board.

Note: Mr. Bartlett's report is not an appraisal. The board reviews the report and treats it as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject Mr. Bartlett's recommendations. Mr. Bartlett's report was sent to the parties on September 9, 1998 and the parties were given an opportunity to comment prior to the board issuing this decision.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$137,775.

The Taxpayers did not submit any evidence of the market value of the Property as of the date of assessment, April 1, 1996. The Taxpayers submitted an opinion by Armstrong Appraisal & Consulting (Armstrong) which stated: "Assuming marketable title and access via a public road versus a private road, we find the assessment reasonable." Mr. Armstrong further stated that because of the poor liquidity, risk and high maintenance along with the uncertainty as to whether the developer would continue to pay taxes and the extended marketing period for this type of property that a discount of 50% of the assessed value is appropriate. Mr. Armstrong did not do an

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appraisal, having merely rendered his opinion of what reduction of value was appropriate given the conditions of the Property.

In arriving at a decision, the board must first determine if the 1996 assessment was proper, and second, determine what adjustment, if any, should be made for the title problems. Based on a review of the evidence, the board finds that there was insufficient evidence to show the assessment was proper.

Further, based on the board's experience¹ in reviewing residential properties along with the evidence that the original mortgage was \$240,000 (see Clauson & Atwood February 21, 1997 letter, page 2) in 1989, the board finds the assessment (without consideration of the title problems) at an indicated

¹ The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33 VI; Appeal of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

market value of \$145,700 (\$163,200 prior to 10% adjustment by the Town ÷ 1.12 equalization ratio) was questionable. Therefore, the board asked Mr. Bartlett to review the evidence, inspect and photograph the Property and the roadway, investigate any comparable sales, and file a report with the board.

The Taxpayers presented no written response to Mr. Bartlett's report. The Town stated in their October 2, 1998 letter that they essentially agreed with Mr. Bartlett's report and with his findings that the assessment before adjustment was somewhat low. Therefore, based on all of the evidence presented, the board finds that Mr. Bartlett's report is the best evidence in determining the proper market value of the Property. Mr. Bartlett, based on a review of the Property², determined the market value of the Property to be in the range of \$164,000 to \$167,600. It should be noted that Mr. Bartlett's land value of the Property was reduced by \$15,000 by capitalizing the yearly maintenance cost of the road (\$1,500) by 10%. The board finds this cost-to-cure method to be a reasonable approach to value the Taxpayers' costs to

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maintain the road. When and if the development issues are resolved and the Town takes possession of and maintains the road, the land value should be increased proportionately with comparable improved sites in the Town. Therefore, the board finds the market value of the Property as of April 1, 1996 (with consideration given for the road maintenance) to be \$164,000 or an assessed value of \$183,700.

Regarding an adjustment for the title problems, the board finds that neither party was convincing as to what the proper adjustment should be. The

² Mr. Bartlett measured the Property and based his calculations on his measurements of a 1-1/2 story residence with 74% finished basement.

board does agree with the Taxpayers that there is a cloud on the title of the Property which would affect its marketability. The board was not convinced, however, that this Property was unmarketable. The Taxpayer would have to disclose to any potential buyer the Property's problems which could limit the number of potential interested buyers and affect the selling price. Given the uncertainty of the development, some adjustment is appropriate. The board has weighed all of the evidence and finds that it must exercise its judgment³ in determining a fair adjustment. Therefore, after careful consideration of all factors, the board finds an adjustment of 25% is reasonable. "Given all the imponderables in the valuation process, [j]udgement is the touchstone." Public Service Co. v. Town of Ashland, 117 N.H. 635, 639 (1977). This adjustment results in an assessment of \$137,775 or an indicated market value of \$123,000 (rounded).

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$137,775 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 and 1998.

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Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA

³ 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).

75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively the assessment was appropriate before consideration was given to any "rehearing motion") of this decision must be filed within thirty (30) days adjustment that should be applied due to the title problems. 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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John Keith Markley and Pamela L. Markley, Taxpayers; and Chairman, Selectmen of Campton.

Date: December 2, 1998

Valerie B. Lanigan, Clerk

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Recertification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John Keith Markley and Pamela L. Markley, Taxpayers; and Chairman, Selectmen of Campton.

Date: December 8, 1998

Valerie B. Lanigan, Clerk

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Recertification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John Keith Markley and Pamela L. Markley, Taxpayers, at 1243 Kurtz Road, McLean, VA 22101; and Chairman, Selectmen of Campton.

Date: December 15, 1998

Valerie B. Lanigan, Clerk

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