

Roger Somero

v.

Town of New Ipswich

Docket No.: 17103-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$134,400 (land \$35,600; buildings \$98,800) on a 2.0-acre lot with a single-family home (the Property). The Taxpayer also owns, but did not appeal, another property in the Town with a \$181,300 assessment. 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) a June 1997 appraisal estimated the market value of the Property at

\$84,000; applying the Town's 1996 equalization ratio of 142% results in an indicated assessment of \$119,280;

(2) two comparable properties show the Property is overassessed;

(3) the Property was sold in June 1997 for \$68,000 after being on the market

for over one year; the Property needed significant repairs (leach field needed
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repair, the carpet was in poor condition, burn hole in counter top, etc.); and

(4) the assessment should be \$119,280 based on the Property's appraised value.

The Town hired AVITAR to review the assessment and adjustments were made to \$131,400 to correct errors on the assessment-record card; the Town argued the revised assessment was proper because:

(1) the Taxpayer's comparables are not comparable because they are older properties and are not as valuable as a raised ranch which is commanding a higher value in Town; and

(2) the Town recognizes it has a high equalization ratio and a revaluation is planned for next year.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$123,500 (land \$26,400; buildings \$97,100). The board's revised assessment is based on adjusting the land for the problems with the leach field in 1996 and depreciating the building 5% for accrued depreciation. Further, this revised assessment is generally supported by the Taxpayer's June 1997 appraisal of \$84,000 if equalized by the Town's 1996 equalization ratio of 142% ($\$84,000 \times 1.42 = \$119,300$).

The board finds the Property, at the time of the appraisal and sale, had

problems with the leach field and had more accrued depreciation than what existed either when the Property was assessed in 1988 or what was recognized by the Town's appraiser upon review at the time of the abatement request. The board has reduced the land condition factor on the primary acre by 10% to recognize the necessary leach field repairs. The testimony was that the leach field was repaired in the summer of 1997. Consequently, the revised land assessment should apply for 1996 and 1997 and the Town should review the leach field renovations done by the subsequent owner for the 1998 tax year and revise the assessment accordingly. Further, based on the Taxpayer's description of some of the deferred maintenance of the building and the age of

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the house, the board finds an additional 5% physical depreciation is warranted to be applied to the Town's revised replacement costs ($\$105,511 \times .92 = \$97,100$). In summary the revised assessment is:

Primary Acre	\$ 23,900
Secondary Acre	2,500
Building Value	<u>97,100</u>
Revised Assessment	\$123,500

The board was unable to place much weight on the comparables submitted by the Taxpayer. As the Town noted, they are generally older and of different style homes.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$123,500 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.

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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this

date, postage prepaid, to Roger Somero, Taxpayer; and Chairman, Selectmen of New Ipswich.

Date: June 23, 1998

Valerie B. Lanigan, Clerk

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