

**Stephen and Gretchen Stockwell**

**v.**

**Town of Bennington**

**Docket No.: 17470-97PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of \$138,100 (land \$24,300; buildings \$113,800) on a single-family home on a 5.0-acre lot (the "Property"). The Taxpayers also own, but did not appeal, a residential condominium assessed at \$66,600. 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) three independent appraisals with effective dates between September 1996 and April 1997 each estimated the market value of the Property to be \$88,000;

(2) the contributory value of the rental unit over the garage has been overestimated by the Town;  
and

(3) the extensive market exposure of the Property and the sales history indicate the Taxpayers' purchase price was an accurate reflection of market value.

The Town argued the assessment was proper because:

(1) the Taxpayers' appraisals have some discrepancies in them including the treatment of the rental unit; and

(2) an independent analysis by the Town using sales of more comparable properties and appropriate adjustments supports the assessment.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$131,800 which would equate to a market value of \$96,200 given the Town of Bennington's 1.37 equalization ratio as determined by the department of revenue administration (DRA) ( $\$131,800 \div 1.37 = \$96,200$  rounded).

The Taxpayers presented two pieces of evidence to show the market value of the Property. The first was the selling price of \$81,000 and the second was a collection of three appraisals each indicating a market value of \$88,000. The appraisals were performed during the period of time from just before the Taxpayers purchased the Property up until the effective date of this appeal, April 1, 1997.

The Town discounted both the selling price and the validity of the appraisals as indicators of market value and gave testimony and produced evidence supporting the current assessment.

The board finds the Town's assessment with a minor adjustment to be the best evidence for the following reasons. First, the board finds the Taxpayers' purchase price is not a good

indicator of market value. The Property was purchased from a lending institution and, therefore, was not considered an arm's-length transaction. The DRA has consistently held that properties purchased from lending institutions are not included in their ratio studies due to the non arm's-length nature of these transactions. Although the Taxpayers testified the Property was on the market for more than a year, no documentation or testimony was given concerning just what the marketing efforts were as well as what instructions, if any, were given to the realtors by the lending institution that had foreclosed on the Property. Some lending institutions have their own marketing companies and no testimony was given as to the efforts made to either liquidate the Property to recoup the lending institution's investment or to dispose of the Property. The Taxpayers testified the Property had been closed and unoccupied for a period during which deferred maintenance accrued causing the Property to require some renovations and cosmetic work prior to occupancy. However, the board did not receive testimony or evidence as to the extent of any expenditures or the work necessary to make the Property more habitable. For these reasons, the board finds that in the instant case, while the sales price is some evidence of the Property's market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). Second, the Taxpayers offered three appraisals of the Property with effective dates between September 12, 1996, and April 1, 1997. Each of the appraisals concluded the same estimate of market value and all three appraisals were performed by the same real estate appraiser. Based on several inconsistencies in the appraisals and the fact

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that the appraiser did not reinspect the Property when performing the last appraisal, more than a year and a half after the first appraisal, the board has limited confidence in the appraiser's estimated market value being an accurate number. Some of the deficiencies or inconsistencies in the appraisals included the varied adjustments for the rental unit over the garage as well as the

selection of comparable sales. The Town pointed out that several of the comparable sales were not the best available, either in design and layout or their location in nearby towns. The board agrees with the Town's testimony that the Town of Hancock is not a comparable area to the Town of Bennington and the Taxpayers' appraiser's use of these comparable sales reduces the accuracy or confidence in the final estimate of value.

The board finds the best evidence to be the Town's initial assessment with an increase in the adjustment for functional obsolescence. The design and unique layout of the floor plan for the primary residence would be a factor that would impact market value. The living room and kitchen are located on different levels of the dwelling. The living room, a bathroom and a family room are on the lower level, while the kitchen, dining room, two bedrooms and a bathroom are on the top floor. Given the four-bedroom restriction the Property has due to the size and design of the septic system and the fact that the rental unit over the garage has two bedrooms causes the floor plan and layout of the primary residence to be a good example of incurable functional obsolescence, and the board finds this should be recognized in the assessment. While the Town did recognize some impact, the board finds the assessment adjustment was not adequate to reflect the impact on value that the floor plan would have. For this reason, the board has increased the functional obsolescence adjustment from 5% to 10% which when combined with the 4% normal

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depreciation yields a total depreciation of 14% for the Property. Reducing the building replacement cost new of \$124,460 as determined by the assessor by the new total depreciation factor of 14% yields a depreciated building value of \$107,000 rounded. To this value must be added the \$500 value for the equipment shed as well as the \$24,300 assessment on the land. Combining these numbers yields a new revised assessment of \$131,800.

The board revised the functional obsolescence factor after reviewing the adjustments the

Town's assessor made on his comparable sales grid comparing five comparables sales to the Property. While the board finds the adjustments made on the grid appear to be reasonable, the board found the impact of the floor plan would be more than the impact of an enclosed porch that some of the comparables sales had as an amenity. The Town's assessor adjusted for the presence or the lack of an enclosed porch with adjustments ranging from \$2,500 to \$4,000. These adjustments represented between 3% and 6% of the market value of some of the comparable sales. The board's opinion is that the unique floor plan would have more of an impact on the value to a prospective purchaser of the Property than the presence or lack of a porch. 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).

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If the taxes have been paid, the amount paid on the value in excess of \$131,800 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 1998. 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

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

**Certification**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Stephen and Gretchen Stockwell, Taxpayers; and Chairman, Board of Selectmen of Bennington.

Date: September 20, 1999

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Lynn M. Wheeler, Clerk