

Kevin Bevis

v.

Town of Londonderry

Docket No.: 17532-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of \$123,500 (land \$31,100; buildings \$92,400) on a 1.2-acre 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 house was incomplete as of April 1, 1997;
- (2) the Town refused to do a site inspection without the prior owner's authority because the deed had not been recorded;

Page 2

Bevis v. Town of Londonderry

Docket No.: 17532-97PT

- (3) the market value as of April 1, 1997 was \$105,000;
- (4) in June 1998 the home was unfinished and a \$15,000 line of credit was received;
- (5) an estimate of the remaining materials and labor to complete the house is \$15,000 to \$20,000; and
- (6) the Property has a market value as completed of \$159,900.

The Town argued the assessment was proper because:

- (1) the Town understood the Property was incomplete in April 1996 which is reflected in the assessment;
- (2) the Town considers the Property was 85% complete as of April 1996; and
- (3) an analysis of comparable sales supports a "completed" value of \$160,000 or an assessment of \$152,000; adjusting for 85% complete indicates a reasonable assessment of \$132,590.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$117,500 (land, \$31,100; buildings, \$86,400). This assessment is based on revising the replacement cost to reflect the proper size of the house and applying 20% for the unfinished areas.

To ensure this assessment revision relates to market value, the board reviewed the market evidence submitted by both parties. Initially it appeared both parties agreed, based on the evidence and the testimony, that the market value of the Property, if finished, would be approximately \$160,000. However, a review of the Town's estimate reveals it is based on the dwelling having one and one half bathrooms versus the Taxpayer's testimony of the dwelling being finished with two and one half bathrooms. The Town had adjusted its market grid for the

Page 3

Bevis v. Town of Londonderry

Docket No.: 17532-97PT

lack of the second full bathroom by \$5,000. Consequently, the Town's estimate would have been \$165,000 if it had been based on a two and one-half bathroom dwelling. The board further

reviewed the other adjustments made by the Town and concludes the location adjustments in comparables 2, 3 and 5 appear excessive based on the differential lot values contained on the assessment-record cards. If the market grid is revised more in line with the lot values contained on the assessment-record cards, a correlation of the indicated values for one and one-half bathrooms approximates \$155,000. Consequently, with this revision the parties' finished market value estimates are consistent - \$155,000 with one and one-half bathrooms or \$160,000 with two and one-half bathrooms.

The board also revised the replacement cost calculation of the dwelling based on its 1,200 square foot footprint using the size adjustment from the 1999 assessment-record card and all other factors from the 1997 card. Without any depreciation, this revision indicates a completed assessed value (including a subsequently built deck) of \$140,600. This assessment when equalized by the Town's 1997 equalization ratio of 95% ($\$140,600 \div .95$) indicates a market value of approximately \$148,000. This estimate, while slightly under the market value conclusion of both parties, is of similar magnitude and within a reasonable range of the value indicated by the market approach.

The board reviewed Marshall Valuation Service percentage breakdown of base cost (Municipality Ex. B) comparing it with the items the Taxpayer testified were incomplete as of

Page 4
Bevis v. Town of Londonderry
Docket No.: 17532-97PT

April 1, 1997.¹ Based on that review, the board concludes the market would recognize approximately a 20% reduction due to the various unfinished items including, but not limited to, one unfinished upstairs bedroom, unfinished master bathroom, interior trim work including

¹ Because the Taxpayer was so involved in the construction of the dwelling, the board finds he presented convincing testimony as to the stage of completion of the dwelling as of April 1, 1997.

doors, ceiling lights, exterior trim, landscaping, etc. This percentage is higher than the Town's because the Town omitted a few items and the market may at times be affected by more than the actual cost to cure the items due to the uncertainty and aggravation of completing the construction.

The following is a summary of the assessment as found by the board.

| | |
|---------------------|-----------------------------------|
| Replacement cost | \$108,000 (does not include deck) |
| Unfinished factor | <u>X.80</u> |
| Building assessment | \$ 86,400 |
| Land assessment | <u>31,100</u> |
| Total | <u>\$117,500</u> |

The board realizes this assessment is higher than the Taxpayer's estimate of value of \$105,000 as of April 1, 1997. However, based on all the evidence, the board concludes the \$105,000 is low and that \$117,500 more accurately reflects the value of the Property in its unfinished state.

If the taxes have been paid for the tax year 1997, the amount paid on the value in excess of \$117,500 shall be refunded with interest at six percent per annum from date paid to refund

Page 5
Bevis v. Town of Londonderry
Docket No.: 17532-97PT

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.

Page 6
Bevis v. Town of Londonderry
Docket No.: 17532-97PT

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Kevin Bevis, Taxpayer; and Karen Marchant, Assessor for the Town of Londonderry.

Date: April 6, 1999

Lynn M. Wheeler, Clerk

0006

Kevin Bevis

v.

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Docket No.: 17532-97PT

ORDER

This order denies the "Town's" motion to dismiss.

The Town asked that the "Taxpayer's" appeal be dismissed because: 1) the Taxpayer had not recorded the deed until May 1998; 2) the Town had assessed the taxes to the Taxpayer's grantor; and 3) the Taxpayer had not notified the Town that he owned the property for purposes of assessing the taxes. Moreover, the Town stated that when the Taxpayer filed his abatement application with the Town, the Town asked the Taxpayer for written authorization of his right to appeal the taxes, but the Taxpayer did not supply any authorization or any information concerning his ownership. Based on these facts, the Town asserted the Taxpayer was not aggrieved for purposes of seeking the abatement. The board disagrees with the Town's analysis.

Under RSA 76:16 and RSA 76:16-a, "any person aggrieved" may seek an abatement with the Town and the board. Certainly, a person who owned the property on April 1, 1997, would

qualify as an aggrieved person. The May 1995 deed to the Taxpayer conveyed the property to the Taxpayer. See Brown v. Manter, 22 N.H. 468, 471 (1851) (recording of deed is not required for title to pass from grantor to grantee); see also RSA 477:3-a, RSA 477:7. Because the Taxpayer was the owner of the property as of April 1, 1997, the Taxpayer, even though the Town

Page 2
Bevis v. Town of Londonderry
Docket No.: 17532-97PT

was unaware of the conveyance, was a person aggrieved under RSA 76:16 and RSA 76:16-a. The fact that the Town was unaware of this conveyance does not alter this conclusion.

The arguments raised in paragraphs five, six, seven and eight of the Town's motion are not on point. None of the cited cases deal with the fact pattern of this case, and those cases do not express any principle that is contrary to the board's analysis here. Specifically, the fact that a former owner who has been assessed a tax may be an aggrieved person does not mean that the current owner (current as of the April 1 assessment date) is not an aggrieved person too. Additionally, no assignment of appeal rights is required, as was the case in Wise Shoe Co. v. Town of Exeter, 119 N.H. 700 (1979), because in this case the Taxpayer was the owner as of the assessment date while in the Wise Shoe Co. case the rights transferred were for years before ownership began.

Based on the above, the board denies the Town's motion.

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.

Page 3
Bevis v. Town of Londonderry
Docket No.: 17532-97PT

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage

prepaid, to Kevin Bevis, Taxpayer; and Karen Marchant, Assessor Town of Londonderry.

Date: November 4, 1998

Valerie B. Lanigan, Clerk

0006