

Henri Vaillancourt

v.

Town of Greenville

Docket No.: 17686-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of \$94,200 (land \$13,200; buildings \$81,000). The property consists of .4-acre parcel with three dwellings (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.

This appeal was heard both on October 27, 1999, and November 29, 1999. At the initial hearing, based on the board granting the Town's motion to limit the grounds of appeal, only evidence on one of the three dwellings was presented. After further review of title and tax billing information submitted at that hearing, the board rescinded its order limiting the grounds of appeal and on its own motion (order dated November 10, 1999), reopened the

record and heard testimony on the balance of the two dwellings and land on November 29, 1999. Consequently, this decision relates to the entire Property.

The Taxpayer argued the assessment was excessive because:

- (1) the Town incorrectly assessed the dwelling occupied by Mr. Henri Vaillancourt (Henri's Dwelling) as a one-and-three-quarter story structure with a total base square footage of 280 square feet when in fact it is all a one-and-one-half story structure with a total square footage of 480 square feet;
- (2) inadequate consideration was given to various factors which limit the value and marketability of the subject Property;
- (3) the subject Property is not worth its assessed value when compared to other similar properties of equal or greater quality or in the same category;
- (4) inadequate depreciation was given to the dwelling occupied by Mrs. Evelyn Vaillancourt (Evelyn's Dwelling) given its unrenovated and outdated interior finish and features;
- (5) inadequate depreciation was applied to the dwelling occupied by Mr. Marcel Vaillancourt (Marcel's Dwelling) given its low-quality construction; and
- (6) based on comparable assessments, a price per square foot of \$13.75 should be applied to the total square footage of the three dwellings (2,336 square feet) which when added to the Town's land and shed assessment totals \$45,987.

At the hearing the Town recommended a revised assessment of \$75,400 based on an interior view of all three dwellings. The Town argued the revised

assessment was proper because:

- (1) the revisions account for the physical and functional problems associated with three dwellings;
- (2) an additional 10% market adjustment was applied to both land and buildings to reflect the unique situation of three dwellings on a small lot; and
- (3) the Taxpayer did not submit any market evidence to support his value conclusion.

Board's Rulings

Based on the evidence, the board finds proper assessment for the appealed Property to be \$66,150 (land \$11,900; buildings \$54,250).

Introduction

The issues appealed in this case were complicated by the way in which the Property is owned and the way in which the Town assessed and billed the Property. A short review of the Property's history of ownership and billing procedures is helpful in understanding the board's conclusions. In 1998 the Taxpayer's mother, Evelyn E. Vaillancourt, deeded .4 acres with a house and several structures to Henry A. Vaillancourt and Marcel J. Vaillancourt as tenants-in-common. Subsequent to the transfer, both Henry and Marcel Vaillancourt established separate dwelling units out of the accessory buildings that were associated with the main house. At some point prior to the tax year in question, the Taxpayer and his brother requested the Town bill them separately for their respective dwellings and one-half of the land and main house (Evelyn's Dwelling) assessment. The Town complied with the request, and thus, in 1997, Henri Vaillancourt received a separate bill identified as parcel ID number 006-082-001 for Henri's Dwelling and a separate bill for one-half the assessment for Evelyn's Dwelling and the land, parcel ID number 006-082-000. Marcel Vaillancourt received a similar bill for one-

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half the assessment of Evelyn's Dwelling and land, parcel ID number 006-082-00A and a separate bill for Marcel's Dwelling, town parcel ID number 006-082-002. Despite how billed by the Town, the board has ruled in its order of November 10, 1999, that the Taxpayer owns the entire Property as a tenant-in-common with his brother Marcel J. Vaillancourt and, consequently, the entire Property's value as a whole must be considered in determining whether the Taxpayer is proportionally assessed.

Findings

First, the board does not find the Taxpayer's argued assessed value of \$45,987 to be reasonable and proportionate. The Taxpayer argued the price per square foot of \$13.75 should be applied to the square footage of the three dwellings. This figure was largely derived from two comparables, the McCuddy and the Rassier properties, and from a gross living area adjustment price contained in an appraisal of another property owned by the Taxpayer.

The Taxpayer extracted a price per square foot of \$12.26 from the McCuddy comparable submitted in Taxpayer Exhibit #1. A review of the assessment-record card indicates the Town added \$12.26 per square foot for the finished area in the utility barn structure behind the main dwelling. The board gives this estimate no weight because the \$12.26 addition is solely for the

finished area and does not include any of the foundation, framing and roof that provides the framework for the finished area.

The board also is unable to place any weight in the price per square foot the Taxpayer derived from the Rassier comparable. The assessment-record card for the Rassier property indicates a high amount of functional depreciation (-55%). The only notation for the functional depreciation was relative to the layout of the building. Neither party was able to testify about the quality and condition of the interior of the property. Consequently, this amount of depreciation appears to be inordinately high.

Also, the board gives no weight to the gross living space adjustment of \$15.00 per square foot contained in the appraisal of another property in which the Taxpayer has an interest. Based on the board's knowledge and experience, such adjustments in the sales approach of appraisals reflect the incremental difference for additional living space but do not capture the higher-cost components of most dwellings such as the kitchen and bathroom areas.

Finally, the Taxpayer argued applying one price per square foot for all three dwellings is appropriate. Based on the photographs, assessment-record card and testimony, it is clear the three dwellings are different in quality and condition, and thus, applying one price per square foot would not reflect what the market would recognize as contributory value of each of the three dwellings.

The board did find a number of the Taxpayer's general arguments to have merit and the following paragraphs address by dwelling the adjustments the board finds appropriate based on the testimony and evidence.

Evelyn's Dwelling

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In addition to the 10% depreciation recommended by the Town, the board has increased the depreciation another 10% (for a total of -35% functional obsolescence) to reflect the outdated finish and kitchen of the dwelling. The Town graded the dwelling as average construction, and based on the board's experience, additional functional depreciation is appropriate for the outdated type of finish for this grade dwelling.

Henri's Dwelling

In addition to the 10% additional functional depreciation recommended by the Town, the board increases the functional depreciation 5% to account for: 1) the section assessed by the Town as one-and-three-quarter story having essentially the functional utility of a one-and-one-half story; and 2) the Town's assessment methodology calculating the replacement cost of the two different story height sections in isolation of each other.

The board agrees with the Taxpayer that a review of the photographs, sketches and descriptions of the building indicates the area listed and assessed by the Town as a one-and-three-quarter story does not have the functional utility normally associated with that story height. The board understands by comparing the photographs of the Property that the Town distinguished two different story heights due to the unique dormer structures.

However, the board concludes those structures do not result in floor space comparable to other one-and-three-quarter story structures presented as evidence by the Taxpayer. There are two ways to correct this error. One is to calculate the areas as all one-and-one-half story living space. However,

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because the Town used the department of revenue administration's (DRA) computer assisted mass appraisal system, the board was unable to recalculate the replacement cost in that fashion. The second way is to apply additional functional obsolescence for this factor, which is done in conjunction with the second reason detailed below.

Based on the testimony of both the Taxpayer and the Town's representative, the board finds DRA's method of calculating the one-and-three-quarter story portion of the building (base square feet of 280) separate from the one-and-one-half story 200 square foot area distorts and inflates the replacement cost price. The two sections should be considered as one since they are really one dwelling. It is the board's experience that replacement cost estimates more accurately reflect actual replacement cost if the square footage of the structure is considered in its entirety as opposed to separating sections in isolation from each other. The DRA system appears to treat the two sections contrary to this manner. The board has compared the differences in replacement cost from the base price table attached to Taxpayer's Exhibit #1 and has determined in conjunction with the story height issue addressed above, an additional 5% depreciation should be applied to the Town's replacement cost.

Marcel's Dwelling

The Town's revised assessment for this dwelling estimates its contributory value to the Property's total value to be nearly \$10,000. Based on the photographs and the Taxpayer's description of the Property, the board

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finds it is unlikely that this dwelling would contribute any significant amount to the Property's value if sold. The board agrees with the Taxpayer's opinion that for the Property to be sold at its highest and best use, it is likely that this third low-cost dwelling would be razed. The small size of the lot (.4 acre) is also a factor in determining that the Property's value would be maximized by having two rather than three dwellings on the lot. However, the board did consider and give some weight to the Town's argument that this structure, despite being of low grade, still could provide some rental income which is some indication of its potential value. In balancing the evidence, the board concludes that applying a 50% physical depreciation and 50% functional obsolescence to the Town's replacement cost reasonably recognizes the dwelling's marginal value contribution to the Property as a whole.

In summary, the board finds the assessments are as follows:

| | | |
|-------------------|--|----------|
| Land | \$11,900 | |
| Evelyn's Dwelling | | |
| Replacement Cost | \$47,361 x .70 (phys. dep.) x .65 (func. dep.) = | \$21,550 |
| Attached Shed | \$ 100 | |
| Henri's Dwelling | | |
| Replacement Cost | \$43,984 x .85 (phys. dep.) x .70 (func. dep.) = | \$26,150 |
| Attached Shed | \$ 300 | |
| Marcel's Dwelling | | |
| Replacement Cost | \$23,352 x .50 (phys. dep.) x .50 (func. dep.) = | \$5,850 |
| Attached Shed | \$ 300 | |
| Total Assessment | \$66,150 | |

If the taxes have been paid, the amount paid on the value in excess of \$66,150 shall be refunded with interest at six percent per annum from date

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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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

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Steven H. Slovenski, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Henri Vaillancourt, Taxpayer; Norman L. Leblond, representative for the Town; and Chairman, Selectmen of Greenville.

Date: December 17, 1999

Lynn M. Wheeler, Clerk

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ORDER

This order relates to the “Taxpayer’s” January 12, 2000 letter which the board treats as a rehearing motion (Motion) pursuant to RSA 541:3 and TAX 201.37. The board denies the Motion as the arguments presented do not warrant granting a rehearing in accordance with TAX 201.37 (d).

The board’s decision of December 17, 1999 (Decision), contains adequate detail as to its findings of a total assessment of \$66,150 for the three dwellings and lot.

Further, the “misstatements” the Taxpayer alleges are contained in the Decision are not material to the board’s ultimate finding of the total assessment for the entire property.

Pursuant to RSA 541:6, any appeal of this order by the Taxpayer to the supreme court must be filed within thirty (30) days of the date on this order.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Steven H. Slovenski, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Henri Vaillancourt, Taxpayer; Norman L. Leblond, representative for the Town; and Chairman, Selectmen of Greenville.

Date: January 27, 2000

Lynn M. Wheeler, Clerk

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