

Michael J. Davis

v.

Town of Madison

Docket No.: 17857-98PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$97,100 (land \$22,100; buildings \$75,000) on a single-family home on a 3-acre lot (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 (through his representative, his brother Steven O. Davis) appeared at the hearing on May 25, 2000 and argued the assessment was excessive because:

(1) the Property was sold in December 1999 for \$75,000 after being listed for 19 months at a higher price;

(2) the original higher listing price of \$89,900 in May, 1998, was based on the Town's

assessment, but did not reflect market value and elicited no offers for one year;

(3) the listing price was then reduced to \$84,900, before the Property sold for \$75,000;

(4) the market value of the Property as of April 1, 1998, was \$76,000 based on an independent market appraisal prepared for the Taxpayer; and

(5) the Property has some deferred maintenance and layout problems not accounted for in the Town's assessment.

No representative of the Town appeared at the hearing, but the board has reviewed the assessment-record card, the denial of the Taxpayer's request for abatement, the Town's 1998 equalization ratio of 105% and other evidence in the file to determine if the assessment was proper. See TAX 202.06(i).

Board's Rulings

Based on the evidence, the board finds the proper assessed value of the Property as of April 1, 1998, is \$79,800. This finding is based on a market value estimate of \$76,000 applied to the Town's equalization ratio of 105% ($\$76,000 \times 1.05$).

The board finds the Taxpayer's appraisal of \$76,000 to be persuasive. The Taxpayer's appraiser based her opinion of market value on nine comparable sales and made appropriate adjustments to each of these sales to reconcile their values to the appraised market value of the Property. \$76,000 is substantially lower than the market value indicated by the Town's equalized assessment ($\$97,100 \div 1.05 = \$92,476$).

Aside from this appraisal, further evidence of a substantially lower market value is the

fact that the Property was sold in an arm's length transaction for \$75,000 in December 1999, approximately 18 months after the assessment date at issue in this case. The courts have established the actual sale price is some evidence of market value, but is not necessarily conclusive. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). However, where it is demonstrated that the sale was an arm's-length market sale, the sales price is "one of the best indicators of the property's value." Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988), quoting from Poorvu v. City of Nashua, 118 N.H. 632, 633 (1978).

The Taxpayer also challenged the Town's assessment because the Town may not have done a physical inspection of the interior. The Taxpayer's representative stated the Property had insufficient baseboard heating, inadequate electrical outlets and needed well water repair work costing \$850, as well as having a non-functional layout. The Town's assessment record card reflects an "average" condition for the Property. There is evidence, however, that the actual condition was "below average," indicating a need for at least 10% in additional physical and functional depreciation. Simply making these adjustments to the replacement cost data on the Town's assessment-record card yields a total assessment (\$80,906) reasonably close to the assessment amount (\$79,800), computed above by using a market value of \$76,000 as of April 1, 1998, and applying the Town's 105% equalization ratio.

If the taxes have been paid, the amount paid on the value in excess of \$79,800 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 1999. Until the Town

undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years, subject to good-faith adjustments under RSA 75:8 and 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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Steven O. Davis, Representative for Michael J. Davis, Taxpayer; and Chairman, Board of Selectmen of Madison.

Date: July 24, 2000

Lynn M. Wheeler, Clerk