

David and Catherine Doyle

v.

Town of Amherst

Docket No.: 17922-98PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$273,900 (land \$99,600; buildings \$174,300) on a 1.86-acre lot with a single-family home (the "Property"). 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) they purchased the Property in 1995 for \$237,451;
- (2) a February 2, 1998 appraisal estimated the Property's market value to be \$258,000;
- (3) the Town has not adjusted the assessment to properly reflect the Property's condition;
- (4) an adjustment should be applied for functional obsolescence due to the lack of a mud room/entryway between the house and the garage;
- (5) an adjustment should be applied for physical condition due to the wet basement; and
- (6) the assessment should be \$252,840.

At the hearing, the Town revised the appealed 1998 assessment. The revised assessment was \$247,400. The Town's assessor testified the revised assessment more accurately considered all factors affecting the Property's valuation.

Board's Rulings

Based on the testimony and evidence submitted at the hearing, the board finds the Town's revised assessment of \$247,400 to be the appropriate assessment for the Property. The revised assessment contains a land value of \$99,600 and an improvements value of \$147,800.

The Taxpayers submitted photographs showing the overall condition of the Property's improvements including evidence of a wet basement, exterior peeling paint and wood rot in the area around some of the windows and sills. The Taxpayers testified that at the time the Property was purchased several physical deficiencies existed, and as of April 1, 1998, these deficiencies had not been corrected.

Prior to its purchase, the Property had been on the market for approximately two years. Its condition and some functional obsolescence characteristics caused the extended marketing period. The Taxpayers testified there is no mud room between the garage and the kitchen and this design has a negative impact on the Property's value.

The Taxpayers submitted a list of several comparable properties (Taxpayers' Exhibit #1) showing the per-square-foot assessment of the improvements for each of the comparables. The Taxpayers testified these comparable properties were not inferior to the Property and the Property's improvements assessment should be in the same range. Although the Town was provided a copy of Taxpayer's Exhibit #1 prior to the hearing, it had not reviewed the properties on the list and could not comment on their comparability.

The Taxpayers also submitted a February 19, 1998 appraisal, performed for refinancing purposes, which estimated the market value of the Property to

be \$258,000. The Town had not reviewed the comparable sales used by the appraiser in the Taxpayers' appraisal and could not testify as to the validity of the estimate of value arrived at by the appraiser. The board finds the appraised value differs by only about 2.2% from the equalized value of the revised assessment [$\$247,400 \div .98$ (equalization ratio) = \$252,400 (rounded)] and supports the assessor's revisions.

After listening to the Taxpayers' testimony concerning various conditions and factors affecting the value of the Property, the Town's assessor revised the Property's assessment-record card. The adjustments to the physical condition and functional obsolescence factors lowered the assessment to one that more accurately reflects the Property's value. The assessor increased the amount of physical depreciation by 10% to reflect the deferred maintenance on the Property. The increase in the physical depreciation by 10% on the dwelling was appropriately carried forward to the outbuildings/additions/improvements section of the revised assessment-record card as well. The assessor also increased the functional obsolescence factor by 5% to reflect the wet

basement condition. The board finds these adjustments to be appropriate and a more accurate reflection of the Property's overall condition.

Therefore, the board orders the Town to set the assessment at \$247,400, the revised value arrived at by the assessor at the hearing.

If the taxes have been paid, the amount paid on the value in excess of \$247,400 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 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

Michele E. LeBrun, Member

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 David and Catherine Doyle, Taxpayers; and Chairman, Board of Selectmen of Amherst.

Date: June 12, 2000

Lynn M. Wheeler, Clerk