

**Thomas W. Christenson**

**v.**

**Town of Atkinson**

**Docket No.: 18664-00PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2000 assessment of \$289,000 (land \$113,700; buildings \$175,300) on a 2.236-acre lot with a single-family ranch home (the “Property”). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); and Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show 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 building quality factor applied by the Town was arbitrary and subjective and should have been A2 rather than A3;
- (2) the quality of the building is overrated because, among other things, it does not have

hardwood and tile flooring throughout as do most other properties in its neighborhood;

(3) a market analysis prepared for the Taxpayer by a relator indicates the “anticipated selling price” of the Property would be \$335,000;

(4) while the Property is in a neighborhood of quality executive homes, the size of the house (1,950 square feet of “above ground” living area, with a partially finished basement) is considerably less than that of most properties in the same neighborhood; and

(5) the proper assessed value should be \$271,350 ( $\$335,000 \text{ market value} \times 0.81 \text{ equalization ratio}$ ).

The Town argued the assessment was proper because:

(1) the Property is located in an upscale neighborhood of large executive homes;

(2) the house is a single-family ranch for which there are no comparable sales in the neighborhood, justifying the use of the cost approach to value methodology;

(3) use of the cost approach, coupled with application of appropriate appreciation factors to the land and building portions of the assessment, results in a market value of \$360,750; and

(4) multiplying this value by the 0.81 equalization ratio for the Town results in an assessed value which is slightly higher than \$289,000 (the revised assessment authorized by the selectmen on May 21, 2001 for the 2000 tax year).

### **Board’s Rulings**

The board finds the proper assessment to be \$275,000.

At the hearing, the Taxpayer expressed some frustration in not being able to receive information from the Town concerning how the assessment was determined. The Town's representative, an assessing agent from Nyberg Purvis & Associates, Inc., testified the firm she represents has only been the assessing agent for the Town for a short period of time (since January 2002) and she was defending the previous assessing agent's assessment value. The assessing operations in the Town have gone through several changes in the past few years. Initially, Avitar Associates performed the revaluation; then, subsequent to the revaluation, the Town's assessing functions were provided by Corcoran Consulting Associates, Inc. On January 1, 2002, Nyberg Purvis & Associates, Inc. became the Town's assessing firm. This series of changes may have contributed to the inconsistent or untimely treatment of the Taxpayer's requests for information.

The Taxpayer made two primary arguments: 1) the quality factor of the dwelling is incorrect; and 2) there are no sales of homes comparable to the Property in the Town. The Taxpayer testified that when the revaluation was done no employee of the company performing the revaluation inspected the interior of the dwelling. Further, the Taxpayer stated that no representative of the current assessing contractor has visited and thoroughly inspected the Property. The board finds it is insufficient for the Town to defend an assessment without a property-specific review, including an interior inspection of the improvements. The board understands the current assessing agent has not been with the Town long and may not be familiar with all properties. However, the assessor could have requested a continuance on that basis for the instant case, and thereby, have an opportunity to visit and inspect the Property. Given the fact that the current assessing agent was defending the assessed value determination of previous

assessors, a requisite and essential part of the defense should have been an inspection of the Property.

Since the Town has not inspected the Property, the board gave some weight to the Town's information and the Taxpayer's testimony and some weight to the market analysis performed by the realtor. The Taxpayer pointed out several differences between the Property and the majority of the homes in the neighborhood, which are upscale executive homes with significantly more "above ground" living area. The Property mainly has wall-to-wall carpeting and oak veneer doors rather than solid doors. The quality of the materials used in the Property's construction does not warrant the A3 quality factor assigned to it.

The board is not obligated or empowered to establish a fair market value of the Property. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine whether the assessment has resulted in the Taxpayer paying an unfair share of taxes. Id. 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). The board finds there is no single determinant factor the decision in this case rests on, but rather it is based on the total body of evidence combined with the experience of the board. After a thorough review of the evidence and testimony, the board finds the correct assessment to be \$275,000. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views

value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). However, the Town's assessment process allocates the total assessment between land value and building value. In reducing the assessment, the board has not allocated the value between land and building, and the Town shall make this allocation on a basis consistent with its assessing practices.

If the taxes have been paid, the amount paid on the value in excess of \$275,000 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 2001. 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

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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: Thomas W. Christenson, Taxpayer; and Chairman, Selectmen of Atkinson.

Date: April 15, 2002

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Anne M. Bourque, Deputy Clerk