

Elaine M. Yeaton Revocable Trust

v.

Town of North Hampton

Docket No.: 19982-03PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$205,400 (land \$143,800; buildings 61,600) on Map 6, Lot 27, a single-family residence on 1.71 acres (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); 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.

Bryan Yeaton, who appeared representing the Trust (“Taxpayer”), argued the assessment was excessive because:

(1) the foundation has several holes and needs repairs;

- (2) during rain storms, the foundation problems cause the basement to flood requiring a sump pump to remove the water;
- (3) only 0.5 acres of the 1.5 acres is useable due to the remainder being wet;
- (4) there is a state-installed drainage system that carries water from the lot across the street and dumps it on the rear of the Property; and
- (5) the Property is not worth more than \$160,000.

The Town argued the assessment was proper because:

- (1) Vision Appraisal did a valuation update in 2003;
- (2) the Town's former assessor, Howard Promer, reduced the Property's assessment after the update to account for all the issues the Taxpayer has raised;
- (3) the Property represents the low end of the housing market in the Town; and
- (4) the Taxpayer has not presented any market value evidence to support her position.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$194,400.

The board finds, given the totality of the evidence and testimony, an additional adjustment is warranted to more accurately reflect the condition of the Property. The Taxpayer testified the foundation of the dwelling needs extensive repairs as there are many holes that allow water to seep into the basement whenever it rains. The Taxpayer stated the frequently wet basement is a continuing problem that is mitigated somewhat by the use of a sump pump, however, it would cost between \$10,000 and \$15,000 to correct the water problem. Further, access to the basement is through a trap door in the floor of a back bedroom at the rear of the house. The basement's limited access and wet condition causes a loss of utility the market would recognize for this area of the dwelling. The board finds an additional 10% should be

added to the physical depreciation factor for this loss. Making this change reduces the assessed value of the dwelling to \$50,600 based on an overall percent condition factor of 46%. Adding the revised building value to the current land value of \$143,800 yields a revised total assessment of \$194,400.

The Property contains approximately 1.5 acres, less than one half acre being usable due to the wetlands located on the remainder of the Property. The Taxpayer testified, at some point in time, the state installed a drainage system that drained a lot across the street from the Property allowing the water to drain under the street, pass by the Property's dwelling and be dumped on the rear of the Property. This drainage system causes the rear of the lot, in excess of 1 acre, to be continually wet and of little utility to the Taxpayer.

Additionally, the Taxpayer testified the dwelling was previously only a one room camp that has had a series of additions attached to it over the years. The most probable purchaser would be someone willing to buy the Property, raze the current dwelling and rebuild a more modern structure.

The board finds the Taxpayer has not shown how these other conditions affected the market value of the Property and, therefore, has not adjusted the assessment further.

In response to the Taxpayer's arguments, the current assessing contractor for the Town testified that, while admittedly the Property was on the low end of the real estate market in the Town, there still is a market for such properties as exhibited by the sale of the property located at 28 Mill Road that sold in 2002 for \$180,000. This was the sale of a property with an older style camp and represents the low end of the market, similar to the Property. The board finds the Town provided insufficient, detailed evidence regarding how this sale compared to the Property. The board is not obligated or empowered to establish a market value for 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)

Further, the Town testified the former contract assessor, Mr. Howard Promer, had already reduced substantially the \$288,000 assessed value determined during the assessment update in 2003 to its current assessment. The Town felt Mr. Promer took into account and adjusted for all the factors the Taxpayer had itemized. Mr. Promer, however, did not attend the hearing, therefore precluding the board from questioning him about the methodology he employed.

The board finds, given the totality of the evidence and testimony, the Property warrants the abatement previously discussed.

If the taxes have been paid, the amount paid on the value in excess of \$194,400 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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(f). 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

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Elaine M. Yeaton Revocable Trust, c/o Bryan Yeaton, 130 Atlantic Avenue, North Hampton, NH 03862, Taxpayer; and Chairman, Board of Selectmen, Town of North Hampton, P.O. Box 710, North Hampton, NH 03862.

Date: 5/26/06

Anne M. Stelmach, Clerk