

**Henri and Marcel Vaillancourt**

**v.**

**Town of Greenville**

**Docket No.: 21118-04PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2004 assessment of \$211,500 (land \$94,000; buildings \$117,500) on Map 6/Lot 82, consisting of three dwellings on a 0.40-acre lot (the “Property”). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show 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) the “Main House” is in poor condition, its first floor contains 480 square feet of living space and the second floor is used as storage space because it can no longer be used as living space

as a result of its severely deteriorated condition; further, the basement is continually wet because of springs flowing through it to a “canal running to a daylight trench”;

(2) “Building 1” does not have separate water and sewer facilities (they are connected through the Main House), has no central heating, only a wood burning stove connected to the chimney, and only one closet for the entire building;

(3) numerous errors on Building 1’s assessment-record card exist, including the 20’ X 21’ storage and shop space which has been assessed as first floor unfinished area;

(4) “Building 2” is in poor condition, has no basement or crawl space and is supported on concrete blocks, large stones and cement piers; a kerosene stove is the only heat source and the building utilities are also connected to the Main House;

(5) the land assessment is excessive in comparison to others on the street; further, the land is assessed at 0.40-acres when in fact the deed dimensions indicate it is 0.25-acres;

(6) the location of the Property is at a dangerous intersection which, along with the noise associated with its location, detracts from its value;

(7) six comparable properties support the inconsistency of assessment of the Property; and

(8) the Town’s comparables are not relevant as most are multi-family properties, one was a grocery store business, and the comparables were much better quality properties.

The Town argued the assessment was proper because:

(1) four comparable multi-unit properties support the assessment;

(2) at the time of the assessment, Building 1’s unfinished area was classified and valued as storage and the basement area was also classified as storage area;

(3) the Taxpayers’ comparables are all single family properties unlike the Property which has two dwellings, plus a camp;

- (4) a complete inspection of the Property was performed as a result of the abatement application and adjustments were made at that time to reflect its condition;
- (5) the acreage of the lot is based on the Town tax map calculations and the Taxpayers never raised the issue in their abatement application; and
- (6) the Town has adequately addressed the buildings and their conditions, has considered the location consistent with its neighborhood, with frontage on Route 31, and believes the Property's assessed value is correct based on its condition, location and use.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$200,200 (land \$82,700; buildings \$117,500). Before making specific findings as to the Property's assessed value, the board will address the Town representative's, Avitar Associates of New England, Inc. ("Avitar") concerns of the propriety of the involvement of the board's review appraiser subsequent to the hearing.

### **Review Appraiser's Report**

Subsequent to the hearing, the board directed one of its RSA 71-B:14 review appraisers (Ms. Theresa Walker) to review the record of the hearing, perform an on-site inspection and prepare a report of her findings. Ms. Walker's summary appraisal report ("Report") was filed with the board on April 3, 2007 with a copy sent to each party. The parties were given an opportunity (20 days) to comment on this Report and the board received comments from both Avitar and Taxpayer Henri Vaillancourt. In arriving at its decision, the board has considered the testimony and evidence presented at the hearing as well as Ms. Walker's Report and the

responses from the parties.<sup>1</sup> In its response, Avitar expressed difficulty in understanding why the board would send its review appraiser to complete an appraisal that would “inadvertently” arrive at a third opinion of value when the “appraiser lacks any mass appraisal experience.” Further, Avitar stated it believed the board should follow “its own rules” by having an appraisal prepared prior to the hearing and providing it to the parties 14 days prior to the hearing in accordance with Tax 201.35.

First, Ms. Walker was requested to do an analysis to arrive at a market value indication of the Property. Ms. Walker has extensive appraisal experience having been in the business since 1992 and is a certified general appraiser in the State of New Hampshire, certainly qualified to appraise the Property and offer her opinion as to whether the assessment is proportionate to its market value. Further, while methodologies may vary, fee appraisal and mass appraisal procedures involve the same appraisal principals. Second, the board will discuss the issues raised by Avitar in light of the relevant statutes and case law and explain why it was appropriate to utilize its review appraiser in this case. The decision to do so was made after the record of the hearing was closed and the board began its deliberations. On February 27, 2007 Ms. Walker informed the parties that [p]ursuant to a request by the board, and under the general authority granted to the board in RSA 71-B:14 ...” she would 1) “conduct an inspection” of the Property at the board’s request; 2) may be “conducting a review of any comparable sales provided” at the hearing; and 3) conduct her own “independent valuation.” Ms. Walker further indicated this was a fact-finding investigation and she would not be taking any testimony from any party as to the

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<sup>1</sup> Along with his April 19, 2007 response, Mr. Vaillancourt enclosed an estimate of value solely of Building 2 prepared by Wells Appraisal Service dated April 16, 2007. This estimate of value has not been made part of the record nor considered by the board in its deliberations as the board kept the record open only to receive parties’ comments on the Report. The Taxpayers did not seek leave to submit additional information (TAX 201-27(k)) nor obviously was the “Wells Appraisal” provided to the Town 14 days prior to the hearing (TAX 201.35).

value of the Property. She stated once her Report was completed, she would provide it to the board and the parties who would be given an opportunity to review and comment on it. No objection or comment to Ms. Walker's letter of February 27, 2007 was made by either the Town or the Taxpayers.

RSA 71-B:5 gives the board the power and authority “[to] hear and determine all matters involving questions of taxation properly brought before it.... In determining matters before it, the board may institute its own investigation, or hold hearings, or take such other action as it shall deem necessary.” (Emphasis added). RSA 71-B:14 authorizes the board to employ and utilize two review appraisers who “shall be competent to review the value of property for tax and eminent domain purposes.” In addition, RSA 71-B:7 provides: “the board shall introduce into evidence and may take into consideration in determining any question any information obtained through its own investigation, including information obtained by persons employed under RSA 71-B:14.” Further, the New Hampshire Administrative Procedure Act at RSA 541-A:31, VI provides that the record of an adjudicative proceeding includes any “staff memoranda” or report.

The board finds the use of its review appraiser to perform a summary appraisal report is well within the board's authority to make “its own investigation” and/or to “take such other action as it shall deem necessary” in order to reach a proper decision. Such steps are not precluded simply because a hearing has been held. In fact, in Appeal of Sokolow, 137 N.H. 642, 644 (1993), the supreme court noted the existence of these statutes and indicated the board had an obligation to utilize the expertise of its review appraisers when the “‘lack of information’ on valuation precluded their ability to grant the taxpayers’ requested abatements.” In Sokolow, as in this case, any appraiser's report then becomes evidence and part of the record. Cf. RSA 71-B:7 and RSA 76-16-a, III.

When read in concert, these statutes and caselaw negate the conclusion the record must be limited solely to evidence presented by the parties at the hearing. If the board determines it is warranted, it can undertake its own investigation, take a view of the property and/or, under RSA 71-B:14, utilize a review appraiser to inspect and value the property for tax purposes. The board also has the option, and at times has done so, of involving its review appraiser before the close of the hearing. However, this practice does not foreclose it from involving the review appraiser after a hearing providing the parties are apprised of the process and given an opportunity to respond to the review appraiser's report. Sokolow at 643.

The board's consistent practice is to treat the Report as one piece of the evidence giving it the weight it deserves. The board considers all other evidence admitted by the same standard.

#### Specific Findings

This Property, while modest in its improvements, is difficult to value due to the tight juxtaposition of the three dwellings on its small lot, their "organic" growth over time and thus their interdependency of utilities, their deferred maintenance (Main House), unfinished areas (Building 1) and low quality construction (Building 2). While certainly the Property's separate components (lot and three dwellings) need to be considered in estimating the Property's value, the board must determine if the sum of the components' values are proportionate to market value and are in keeping with market perceptions of the Property as a whole.

For these general reasons, the board is unable to rely on the value conclusion of the Report. Also based on the entire evidence, the board concludes the Main House, while certainly in need of major renovations, contributes a value more in line with that as assessed by the Town than the \$5,000 estimate in the Report. Similarly, due to its attachment to Building 1 and the description of its low cost construction components, the board concludes that any prospective

purchaser would place nominal value on Building 2 (similar to that assessed by the Town) rather than the \$55,000 estimate calculated by the income approach in the Report. While the Report's income approach attempts to quantify Building 2's value based on a potential income stream, we conclude it is unlikely that it could achieve such market rent for the reasons noted above.

It certainly has a value in use as a dwelling for one of the owners but, generally, value in exchange versus value in use is the basis for determining assessed value. On balance, the board finds the Report's market value of \$175,000 underestimates the Property's overall value.

The Taxpayers presented a lengthy narrative relative to their concerns of the Town's assessment. One of the concerns was the size of the lot. Based on the inconclusive description of the warranty deed submitted as part of Taxpayer Exhibit No. 3, the board is unable to definitively determine whether the lot is 0.25-acres as argued by the Taxpayers or 0.40-acres as indicated by the Town tax map. Regardless, the board finds determination of the lot's definitive size is not critical in determining its contributory value improved as it is with three dwellings. Another concern raised by the Taxpayers was the Town's treatment of the unfinished areas of Building 1. However, after review of the assessment-record card, the board concludes the Town's assessment of the storage/shop area as unfinished living area is reasonable given the similar construction framing and its proximity to the finished living area.

Due to the unique nature of the Property, as outlined earlier, the board was unable to derive any good market value indication from either the Town's or the Taxpayers' comparables. The Town's comparables were largely of more traditionally multi-family properties, which provide some indication the three existing dwellings on the small lot increased the value, to some extent, above a single-family residence. The board reviewed the Town's condition factors on the assessment-record cards of the multi-family properties that increased the lot value by ten to

twenty-five percent above the value of a single-family residence lot and concludes that due to the unconventional development of the lot, the shared utilities and the close proximity of the dwellings on a small lot, the condition factor of 125% overstates the contributory value of the lot. The board has reduced the condition factor to 110% to recognize some additional value for the grandfathered multi-dwelling rights but also recognizing the less than conventional development of the lot. The board finds no further adjustment is warranted to reflect the balance of the arguments presented by the Taxpayers relative to the lot or its various dwellings. For example, the Taxpayers described the accidents which have occurred on the lot due to it being below grade and at the intersection of Mill Street and Route 31. The board finds the incidence of the accidents are not of such magnitude that the market would likely be affected. Further, the Taxpayers argued the Main House was in such poor condition it contributed little value to the Property. While the descriptions contained both in the Taxpayers narrative and the Report along with the photographs highlight the deferred maintenance, the board finds the Main House could be economically renovated as a dwelling whether as the primary residence or as a rental unit associated with Building 1. Also, its presence grandfathers the right to have more than one residence on such a small lot further supporting a higher value than that argued by the Taxpayer or suggested in the Report.

In summary, the board finds reducing the land condition factor to 110% results in an overall assessment of \$200,200 which reflects the numerous factors (both positive and negative) of this unique Property.

If the taxes have been paid, the amount paid on the value in excess of \$200,200 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

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Henri and Marcel Vaillancourt, PO Box 142, Greenville, NH 03048, Taxpayers; Christina Murdough and Edward Tinker, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, representatives for the Town; and Chairman, Board of Selectmen, Town of Greenville, PO Box 343, Greenville, NH 03048.

Date:

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Anne M. Stelmach, Clerk