

**Armand and June Vaillancourt**

**v.**

**Town of Allenstown**

**Docket No.: 18814-01PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2001 assessment of \$154,200 (land \$23,500; buildings \$130,700) on a 2.02-acre lot with improvements (the “Property”). For the reasons stated below, the appeal for abatement is denied.

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. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the assessment increased substantially from the prior tax year and the increase is not justified even when the construction and occupancy of a house (by January, 2001) is taken into account;

- (2) comparable properties shown in Taxpayer Exhibit 1 had substantially lower assessments than the Property;
- (3) several of these properties later sold for considerably more than their assessments;
- (3) in its computations, the Town should have used living area measurements taken from inside the building; and
- (4) the Property has an unfinished basement which reduces its value in comparison to other houses.

The Town argued the assessment was proper because:

- (1) the Property is located in a growing subdivision consisting of ranch, split-level and cape-style houses;
- (2) the same, approved standard of calculating living area (using outside measurements) was employed for the Property and other properties in the Town;
- (3) in evaluating the Taxpayer's comparables, basement finished area and basement garages contribute less to market value than above-ground living areas and attached garages, respectively;
- (4) Town-wide assessment updates were performed for in tax years 2000 and 2001 and the Town's resulting equalization ratio was 0.93 in tax year 2001;
- (5) appreciation rates for properties in the Town are catching up with other municipalities in the Concord area and are estimated to be 10 percent per year (as a median) in the relevant period;
- (6) taking these factors into consideration, the analysis presented in Municipality Exhibit A reflects a market value of \$167,600 and an indicated assessed value of \$155,900 (using the 0.93 equalization rate), which is above the actual assessment of the Property; and
- (7) the Taxpayers failed to meet their burden of proof.

**Board's Rulings**

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed.

The Property consists of a single-family, ranch style home which the Taxpayers constructed and occupied by January 2001. In tax year 2000, the Property was assessed on the basis of land value only (\$19,800), but for tax year 2001, based on the completion of construction and occupancy and an update of values conducted by the Town, the assessed value increased to \$154,200. The equalized market value of the Property (using the 0.93 equalization ratio) is approximately \$165,800. The burden of proving disproportionality could have been met if the Taxpayers had presented evidence establishing a lower market value for the Property as of the assessment date (April 1, 2001). See RSA 75:1 (Supp. 2002) (property to be appraised "at its market value").

The Taxpayers, however, failed to present any evidence of market value. When asked, one responded he did not know the market value of the Property as of the assessment date. Instead of market value evidence, the Taxpayers' presentation focused largely on the assessment of six other properties in the Town (discussed below).

The Town, on the other hand, presented a report (Municipality Exhibit A) which compared the Property to four other ranch-style homes which had sold to conclude the Property had an estimated market value (\$167,600) slightly above the equalized market value indicated by the assessment. The board has reviewed the adjustments made by the Town in Exhibit A to arrive at this conclusion and finds them to be reasonable. These included a time adjustment of 10 percent per year (0.83 percent per month) applied to the sales prices and other reasonable adjustments made for age, living area, garage, size and other differences affecting market value.

The Taxpayers instead focused their presentation on alleged differences between the assessment of the Property, located at 24 Birchwood Drive, and six properties in the Town. The board has reviewed the assessment record cards and other evidence for these properties (420 Deerfield Road, 12 Highfield Drive, 13 Highfield Drive, 32 Dowst Road, 55 Birchwood Drive and 14 Birchwood Drive). Each card reflects consistent assessed land values, but differences in the building component that result in a range of total assessments from \$100,400 to \$146,500. The Taxpayers failed to prove, however, that these differences in assessed values establish disproportionality for the reasons discussed below.

The properties differ in style (ranch, raised ranch and cape), living areas, garage and other features, as shown on the summary sheet attached as part of Municipality Exhibit A. Five of the six have considerably less living area (ranging from 852 – 1,338 square feet, compared to 1,548 square feet for the Property). Only one (14 Birchwood Drive) has an attached garage like the Property and that garage is assessed higher (\$13,900 compared to \$8,800), a reflection of its larger size (780 square feet compared to 484 square feet). Because of differences in age, the Town applied depreciation factors (up to 9 percent) for older properties, but did not do so for new construction such as the house on the Property. The Town's summary sheet then compares assessed values per square foot of calculated living area for each of the properties to show the Property was not disproportionately assessed in comparison to these six properties.

The Taxpayers questioned whether the Town's approach in calculating living area was proper because it was based on outside measurements rather than the actual inside living area. The Town's contract assessor (Wil Corcoran) testified the Town followed a consistent practice of including such space in the living area computations. He explained this was a practical response to the fact assessors are not always able to gain entry into homes to calculate "inside"

living areas. The board notes it is common industry practice to measure living area (and indeed square footage of all types of structures) from the “outside perimeter of the structure.” See Appraisal Institute, The Appraisal of Real Estate (11<sup>th</sup> ed. 1996) at pp. 242-43 and 352. Accord, Kliwer v. Town of Swanzey, BTLA Docket No. 15092-94 (February 13, 1997), 1997 WL 159654. Use of a consistent and standard methodology is some evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

Regarding the valuation of the basement, the Town did not include it as living area because it was unfinished and ascribed a lower value to it. The Town’s assessor testified that ‘below-grade’ improvements were less valued in the market than ‘above-grade’ improvements and that basement finished areas are given some weight in assessments, but not to the same degree as other types of living area.

Even if the Taxpayers could establish that one or more properties in the Town had lower assessments when compared to the Property, this outcome would not entitle them to an abatement because the underassessment of others<sup>1</sup> does not prove the overassessment of the Property. See, e.g., Appeal of Cannata, 129 N.H. 399, 401 (1987).

In summary, the touchstone for testing proportionality should be market value. Although the assessment of the Property increased substantially from the prior year, largely due to the construction of a house, the Taxpayers failed to meet their burden of establishing disproportionality, when evidence of the estimated market value of the Property and the general level of assessment in the Town is taken into account. The appeal is therefore denied.

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<sup>1</sup> In this regard, four of the six properties relied upon by the Taxpayers (420 Deerfield Road, 13 Highfield Drive, 55 Birchwood Drive and 32 Dowst Road) sold later in 2001 and in 2002 for substantially more (\$179,933, \$214,000, \$188,933 and \$147,933, respectively) than their assessed values in these tax years 2001. See Taxpayer Exhibit 1.

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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Paul B. Franklin, Chairman

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Armand and June Vaillancourt, 24 Birchwood Drive, Allenstown, New Hampshire 03275, Taxpayers; and Chairman, Board of Selectmen, Town of Allenstown, 16 School Street, Suncook, New Hampshire 03275.

Date: July 23, 2003

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Anne M. Bourque, Deputy Clerk