

Scott and Monica Jackson

v.

Town of Allenstown

Docket No.: 19594-02PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2002 ad valorem revised assessment of \$197,200 on a single-family home with improvements situated on one acre (the “Property”). (The Taxpayers did not appeal the current use assessment of \$1,469 on an additional 10.2 acres in current use.) For the reasons stated below, the appeal 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 abated assessment was excessive because:

(1) while the Taxpayers do not dispute the land component of the ad valorem assessment, the value of the improvements is still too high;

- (2) in the cost approach section of an appraisal prepared in 2002 for refinancing purposes (contained in Taxpayer Exhibit 1), the appraiser estimated the depreciated value of the improvements at approximately \$148,000;
- (3) the Taxpayers believe the market value of the land not in current use is no more than \$30,000, resulting in a total market value of no more than \$178,000, to which the Town's level of assessment of 92% should be applied;
- (4) the comparables used by the Town are better built and have more "curb value" (appeal) than the Property;
- (5) the Taxpayers' two comparable sales on Kenwood Drive, a superior location compared to the Property (adjacent to a mobile home park), were also used by the Town and had sale prices which support a lower assessment for the Property; and
- (6) the Town recognized the comparable sales' superior location in assigning higher land values to the Kenwood Drive neighborhood.

At the hearing, the Town indicated it was in the process of issuing a rebate to the Taxpayers because it had recently decided to reduce by \$30,000 the original ad valorem assessment (from \$227,200 to \$197,200), and argued the revised assessment was proper because:

- (1) the level of assessment (median ratio) in the Town for tax year 2002 was 92%;
- (2) a property-specific analysis prepared by the Town's review appraiser (Appraisal Summary Report, Municipal Exhibit A) supports the Town's revised assessment;
- (3) the Taxpayers' appraiser's estimate of a building value is based on a cost approach, rather than a sales comparison approach and the market does not value land and building components separately but rather looks at the value of the Property as a whole;

(4) the Town conceded the Property actually has 2 rather than 3 bathrooms, which should reduce its market value estimate by \$3,500 in its analysis; and

(5) the Taxpayers failed to sustain their burden of proof.

Board's Rulings

Based on the evidence, the board finds the proper ad valorem assessment to be \$192,200, a reduction of \$5,000 from the revised assessment proposed by the Town at the hearing. The basis for this adjustment and the board's reasoning is presented below.

The board finds the best evidence of market value to be the Town's direct sales comparison analysis set forth on page 6 of Municipality Exhibit A with two additional modifications to correct for the actual number of bathrooms and to increase the location adjustment for several comparables used in the analysis.

The Town's analysis assumed the Property has three bathrooms, but it actually has only two, as shown on the assessment-record card and confirmed by one of the Taxpayers. The Town assigned a value of \$3,500 per bathroom and agreed at the hearing the adjustment for a third bathroom should be removed from the analysis.

Regarding location, two of the Town's comparable sales are on Kenwood Drive, which the board finds to be a much superior location to the Property for several reasons. First, the Property is situated very close to a large mobile home park (Holiday Acres) and is on a street with older manufactured housing units on private lots adjacent to this mobile home park. The Kenwood Drive properties are better situated in another part of the Town, in an area of much newer and more expensive housing. These locational differences are reflected in the Town's assessments: one-acre home sites on Kenwood Drive have a much higher land value (\$36,000) than the Property (\$22,500), an indication that they are recognized to be in a higher value

neighborhood. The board members took a view of the Property and its neighborhood, the Holiday Acres mobile home park and the Kenwood Drive neighborhood, after the hearing to review these locational differences. Based on all these factors, the board finds the Town's location adjustment of \$2,500 for each of the Kenwood Drive properties in its direct sales comparison analysis is too low and that it should be increased to \$7,500.

When these adjustments are made, and the weights used by the Town are applied, the resulting indication of market value is reduced to \$208,940 (from \$214,400). Applying the 92% equalization ratio for the Town, the resulting assessment is reduced to \$192,200 (rounded) from \$197,200, a net difference of \$5,000.

The Taxpayers argued, but did not meet their burden of proving, the Property has an even lower market value. They argued the market value was \$178,000 based on an assumed value of \$30,000 for the land not in current use and a building value of \$148,000. The latter estimate was obtained from the replacement cost section of a "summary appraisal report" prepared for the Taxpayers for financing purposes, which shows the depreciated value of the improvements, using a cost approach, to be \$147,638. Their appraiser attributed an additional \$10,000 to the "As Is" value of the site improvements (without specifying what these are) and an estimated site value of \$55,000 for the entire 11.2 acres, to conclude the Property had a market value of \$212,000 as of April 22, 2002. Their appraiser did not testify at the hearing.

The board, however, must consider the market value of the Property as a whole, because this is how the market views value, rather than considering land and building components separately as the Taxpayers suggested. Cf. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985) (taxpayer's entire estate must be considered to determine if abatement is warranted). Simply adding an assumed value of \$30,000 for the land to the depreciated replacement cost

estimate for the improvements of approximately \$148,000 does not establish the market value of the Property. The house on the Property is attractive and newly constructed and should be compared to the selling prices of homes of comparable quality. Based on these considerations, the board cannot conclude the market value of the Property (consisting of the improvements on one acre of land not in current use) was less than \$192,200

If the taxes have been paid, the amount paid on an assessment in excess of \$193,669 (\$192,200 ad valorem plus \$1,469 current use value) 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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Scott and Monica Jackson, 63 Chester Turnpike, Allenstown, New Hampshire 03275, Taxpayers; and Chairman, Board of Selectmen of Allenstown, 16 School Street, Allenstown, New Hampshire 03275.

Date: August 25, 2004

Anne M. Stelmach, Deputy Clerk