

James and Joanne Jackson

v.

Town of Allenstown

Docket No.: 19724-02PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2002 assessment of \$160,300 (land \$20,300; buildings \$140,000) on a single-family home on a 0.72-acre lot (the “Property”). 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 assessment was excessive because:

(1) they have lived on the Property for approximately 30 years and their house was built by a mobile home manufacturer in Pennsylvania;

(2) originally a 'ranch-style,' the house now looks like a cape because of renovations made while fixing the roof in 1989 and thereafter;

(3) because of the building materials used (particle board) and other factors (described in Taxpayer Exhibit 1), there are now sagging floors and other quality of construction issues affecting the value of the house;

(4) the photographs in Taxpayer Exhibit 1 depict substantial roof damage, missing cabinets and cabinet parts, and other problems in the kitchen and dining room areas;

(5) the Property has water problems including high manganese levels which require frequent faucet parts replacement and maintenance; exceptionally high arsenic and radon levels, making the water unsafe to drink; and the water and sewer services are supplied by a private utility with rate charges twice as high as typical municipal services;

(6) to bring the house to a "normal" (average) condition would require almost \$48,000, including driveway and paving repairs from a local contractor;

(7) the Town abated the tax year 2001 assessment substantially, from \$158,800 to \$123,700, after making a physical inspection;

(8) a comparison to other properties (Taxpayer Exhibit 4) shows assessment inequities and lower one-year assessment increases and the abutting mobile home park (Holiday Acres) included in this analysis shows a 0% one-year assessment increase, compared to 29% for the Property;

(9) a large portion of the assessed value of the Town is represented by the mobile home park and the Taxpayers believe the park is underassessed significantly (at about 70% of market value compared to 92% for the rest of the Town);

(10) one of the outbuildings on the Property (labeled as a utility shed) was reduced in size before tax year 2002 from 24' x 20' to 12' x 20';

(11) the Town's arguments regarding "entry level" housing prices (being \$150,000 or more) are not consistent with the fact that some comparable properties are assessed at much lower values; and

(12) the market value of the Property, given its condition, was no more than \$123,000 as of April 1, 2002.

The Town argued the assessment was proper because:

- (1) the level of assessment (median ratio) in the Town was 92% in tax year 2002;
- (2) the Town's last reassessment was in 1997, and several updates have been performed, including in 2001 and 2002;
- (3) while there are "tough issues" pertaining to the Property's condition (as evident from the photographs), the threshold cost of acquiring affordable or "entry level" housing in the Town is at least \$150,000;
- (4) the Town did apply a minus 25% physical depreciation and a minus 29% obsolescence factor to take into account the condition of the house;
- (5) the assessment increased from 2001 to 2002 because of base rate adjustments made throughout the Town;
- (6) the Property has several large outbuildings, including an oversized garage;
- (7) mortgage lenders and the market would view the house as a "modular" or "stick-built" home rather than a mobile home (since it is not built on a metal frame, for example), but the Town did apply a minus 10% quality adjustment to account for this factor;
- (8) the Town reviews assessments by strata, including mobile homes, and did not find the mobile home park to be underassessed;

(9) the Town adjusted the land by a minus 10% to account for the water and associated problems mentioned by the Taxpayers;

(10) the Town is agreeable to correcting its records if the utility shed listed on the assessment-record card was actually reduced in size by one-half; and

(11) the Taxpayers failed to satisfy their burden of proof.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$140,700 for tax year 2001.

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, 920 (1979). The board 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).

After reviewing all the evidence, the board placed weight on the Town's physical inspection of the Property in 2001 and its agreement, as indicated in Taxpayer Exhibit 3, to abate the assessment for that year to \$123,700, a figure satisfactory to the Taxpayers. Applying the Town's 93% level of assessment for tax year 2001 to this assessment, yields an indicated market value for the Property as of April 1, 2001 of \$136,559. Except for removal of half of an outbuilding (discussed below), no significant physical changes to the Property occurred for assessment purposes between 2001 and 2002. The Town's contract assessor (Wil Corcoran) testified property values were increasing by 12% per year in that period, an estimate the Taxpayers did not dispute. Applying a 12% increase to the \$136,559 market value indication for 2001 gives an indicated market value of \$152,946 for 2002. When the agreed equalization ratio of 92% for tax year 2002 is applied, the resulting assessment is \$140,700 (rounded).

This finding is consistent with other evidence. Mr. Corcoran testified, for example, that the “threshold” price of “entry level” housing in the Town had risen to at least \$150,000. At the 92% level of assessment, the assessment on such a house would be \$138,000, not much below the assessment arrived at by the board.

The board noted the condition of the house, as described in Taxpayer Exhibit 1 and the photographs included in that exhibit. This evidence clearly indicates a substantial amount of deferred maintenance exists that no doubt affects market value. The Town gave the house a quality grading of “C minus,” resulting in a 5% reduction (\$4,570) to the building value before depreciation, and then applied 25% physical depreciation and 29% obsolescence factors. One of the Taxpayers testified they had received (just several days prior to the hearing) a quote from a local contractor estimating it would cost almost \$48,000 to make needed repairs to bring the house to “normal” condition. See also Taxpayer Exhibit 1, page 3. There is no assurance, based on the board’s experience, that making those repairs would result in a dollar-for-dollar increase in the Property’s market value.

The Town took into consideration the location of the land next to a large mobile home park (Holiday Acres) and the water problems by applying a minus 10% factor to the land value. The board finds this adjustment to be sufficient.

One of the Taxpayers testified that one of the outbuildings listed on the assessment-record card was reduced in size between 2001 and 2002 (from 24’ x 20’ to 12’ x 20’). The Town agreed to correct its records to reflect the reduced size of this structure.

Finally, the Taxpayers attempted to introduce evidence the Town had underassessed the Holiday Acres mobile home park and the assessment on the Property showed a higher one year percentage increase than several other properties. The underassessment of others, however, does

not prove the overassessment of the Property. Appeal of Cannata, 129 N.H. 399, 401 (1987). Moreover, a greater percentage increase than the “average” increase following a Town-wide reassessment is not a ground for an abatement, since unequal percentage increases are to be expected between differing properties. Reassessments are implemented to remedy past inequities and therefore adjustments may vary, both in absolute numbers and in percentages, from property to property.

Statutory remedies exist for taxpayers who believe another property may have been improperly or unequally assessed. See RSA 71-B:16, I. The Taxpayers therefore have a remedy if they believe Holiday Acres and/or other mobile home parks, which account for a large portion of the Town’s total assessments, are significantly underassessed. Such underassessment, if it is established, cannot serve as the basis for a further abatement of the Property in this appeal.

If the taxes have been paid, the amount paid on the value in excess of \$140,700 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: James and Joanne Jackson, Taxpayers, 68 Chester Turnpike, Allenstown, New Hampshire, 03275; and Chairman, Board of Selectmen of Allenstown, 16 School Street, Allenstown, New Hampshire, 03275.

Date: August 25, 2004

Anne M. Stelmach, Deputy Clerk