

**Mary Kate and Edmund Marvelli, Jr.**

**v.**

**Town of Franconia**

**Docket No.: 20124-03PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$254,500 (land \$78,300; buildings \$176,200) on a single-family home on a 2.64-acre lot (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) their lot is small and its land value increased disproportionately compared to others on the same street;

(2) two other nearby lots (Luce and Beltz) have views similar to the Property but have no view adjustments on their assessment-record cards; and

(3) the Luce property's common land assessment of \$4,500 is one half the Property's \$9,000 common land assessment.

The Town argued the assessment was proper because:

(1) adjusting, at an appropriate rate of appreciation, the Taxpayers agreed upon September 2004 selling price for the Property indicates the assessment is not excessive; and

(2) after a review of the assessments of the other properties referred to by the Taxpayers, the Town adjusted the Luce property's common land assessment to \$9,000 to reflect its similarity to the Property.

### **Board's Rulings**

The board finds the Taxpayers failed to prove the Property was disproportionately assessed.

The Taxpayers stated they were only contesting the assessment on the land portion of the Property and were not contesting the building's assessment. In support of their position, the Taxpayers presented a comparison of the abutters' land values based on the tax year 2003, Town-wide reassessment. The Taxpayers contend the dramatic increase in their land assessment is disproportionate to the increase in assessments of some other nearby properties. As an example, they compared the common land assessments for the Property and the Luce property to show the inconsistencies in the Town's methodology. The Taxpayers testified the Luce property's common land was assessed at \$4,500 while the Property's common land is assessed at \$9,000. The Taxpayers believe this is some representation that the Town's methodology was flawed.

The Town agreed the assessment of the Luce property's common land should have been \$9,000 and has subsequently made that adjustment so that in 2004 all of the properties mentioned had the same common land assessments.

Assessments must be based on market value. See RSA 75:1. The only evidence of the Property's market value was the Taxpayers' testimony regarding their listing and agreeing to sell the Property in 2004. A purchase and sale agreement was signed with a potential buyer for \$372,000 in September 2004. The Taxpayers stated, however, that although a purchase and sale agreement was signed, no transfer took place due to the presence and discovery of radon in the water supply. The potential purchasers wanted the Taxpayers to cure the radon condition prior to purchasing the Property. The Taxpayers stated they were unwilling to make the \$4,000 expenditure necessary to cure the radon condition and, therefore, the sale was not finalized. The board heard no testimony that the agreed upon selling price was not representative of the Property's market value or that the sale would not have been an arm's-length transaction.

The Town testified property values were increasing at a rate between 20% and 24% per year during the seventeen-month time period from the date of the assessment (April 1, 2003) to the date of the Taxpayers' purchase and sale agreement (September 2004). Further, the Town stated that adjusting the \$372,000 agreed upon selling price by the rate of appreciation suggested previously (say 22% per year or 1.833% per month) results in a value of \$256,000 (rounded).<sup>1</sup> This value is nearly the same as the Property's equalized assessment. The Property was assessed at \$254,500 and the median level of assessment for the Town in 2003 was 0.995. The equalized assessment, therefore, is approximately \$255,800 ( $\$254,500 \div 0.995$ ).

<sup>1</sup>  $\$372,000 - [\$372,000 \times (0.01833 \times 17 \text{ months})] = \$256,000$  (rounded).

The board finds these calculations to be an indication the Property was not disproportionately assessed compared to its market value and the general level of assessment in the Town.

The board recognizes the Taxpayers' argument that, as shown in their analysis, their assessment increased substantially and at a different rate than some of the abutting properties. The board finds such evidence does not conclusively prove the Property is disproportionately assessed. See Appeal of Town of Sunapee, 126 N.H. 214 (1985). A greater percentage increase in an assessment following a municipal reassessment or update is not a basis for an abatement since unequal percentage increases are inevitable following such reassessments. RSA 75:8 requires municipalities to examine all real estate in the municipality on an annual basis and reappraise such real estate that has changed in value. Reassessments or updates are intended to remedy past inequities and, thus, new assessments will vary between properties, both in absolute numbers and in percentages. Justice requires that an order of abatement not relieve the Taxpayer from bearing his or her share of the common burden of taxation, notwithstanding any errors of law or fact pertaining to how the assessment was made. For example, proving the municipality lacked a "sound methodology" when it made the assessment is not sufficient unless there is proof of disproportionality. Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (2003). The board finds no probative evidence has been provided to support a claim of disproportionality.

Therefore, for the reasons discussed, the board finds the Property is not disproportionately assessed and the appeal is denied.

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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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mary Kate and Edmund Marvelli, Jr., 59 Franconia Mts. Road, Franconia, New Hampshire 03580, Taxpayers; and Chairman, Board of Selectmen, Post Office Box 900, Franconia, New Hampshire 03580.

Date: August 1, 2005

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Anne M. Stelmach, Clerk