

**Thomas W. Christenson**

**v.**

**Town of Atkinson**

**Docket No.: 20236-03PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$453,300 (land \$234,600; buildings \$218,700) on Map 12, Lot 43, a single-family residence on 2.236 acres (the “Property”). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the Town has increased the assessment substantially from the previous assessment and has disregarded the board’s prior decision on the Property contained in Docket No. 18664-00PT;
- (2) the market for homes under 2,000 square feet in this neighborhood is limited and no comparable sales of properties similar in size to the Property have sold near the value assessed by the Town; and

(3) a market analysis (“Analysis”) of the Property prepared by Susan Padden of Coldwell Banker estimated an anticipated selling price of \$399,900.

The Town argued the assessment was proper because:

- (1) the board’s prior decision is not relevant because the Town was revalued in tax year 2003;
- (2) the sales utilized in the Analysis are not comparable and the land values in the Property’s neighborhood are much higher than the sales’ neighborhoods;
- (3) a review of seven land sales supports the Property’s land value; and
- (4) nine residential sales support the 2003 assessment.

Subsequent to the hearing, the board directed one of its RSA 71-B:14 review appraisers to inspect the Property and submit a report containing an independent opinion of the Property’s April 1, 2003 market value. Ms. Cynthia L. Brown filed a complete summary appraisal report (the “Report”) on February 23, 2006, a copy of which was forwarded to the parties and they were given twenty (20) days to respond to the Report. The Taxpayer responded to the Report in a March 1, 2004 letter; no response was received from the Town.

### **Board’s Rulings**

Assessments must be based on market value. RSA 75:1. Given the amount of conflicting testimony received at the hearing and in the parties’ submissions, the board directed its review appraiser to prepare the Report. The board finds the Report offers the best evidence of the Property’s market value. In the Report, Ms. Brown developed the Cost Approach and the Sales Comparison Approach. While there are three approaches to value, not all three approaches are of equal import in every situation. Appraisal Institute, The Appraisal of Real Estate, 62 (12<sup>th</sup> Ed. 2001); International Association of Assessing Officers, Property Appraisal and Assessment Administration, 108 (1990). In New Hampshire, the supreme court has recognized that no single approach is controlling in all cases, Demoulas v. Town of Salem, 116 N.H. 775, 780 (1979). In

the final reconciliation, the Report places the most weight on the Sales Comparison Approach's market value conclusion. The board finds this conclusion to be appropriate and the adjustments contained in the sales analysis grid in the Report to be reasonable and well supported. Therefore, based on the Report's market value conclusion of \$434,000 and the Town's 2003 equalization ratio of 98.2%, the board finds the appropriate assessment to be \$426,200 (rounded) ( $\$434,000 \times 0.982$ ).

The board finds the Taxpayer's argument concerning the large increase in the assessment due to the revaluation is not relevant as increases from past assessments are not evidence that a taxpayer's property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985).

Reassessments are implemented to remedy past inequities and adjustments will vary both in absolute numbers and in percentages from property to property. Therefore, unequal percentage increases are inevitable following a reassessment. For the same reason, the board's prior decision regarding the Property (Docket No. 18664-00PT) is not relevant in the instant case given the Town's revaluation in 2003. RSA 76:17-c,I.

Whenever the board of tax and land appeals, pursuant to RSA 76:16-a, or the superior court, pursuant to RSA 76:17, grants an abatement on the grounds of an incorrect property assessment value, the selectmen or assessors shall thereafter use the correct assessment value, as found by the board or the court, in assessing subsequent taxes upon that property, until such time as they, in good faith, reappraise the property pursuant to RSA 75:8 due to changes in value, or until there is a general reassessment in the municipality.

Further, the board gives the Analysis performed for the Taxpayer by a local realtor, indicating the home would sell for \$399,900, little weight as it did not discuss or make adjustments for the unique characteristics of the Property compared to all the sales listed.

Without the realtor being present or some other support for the Analysis' value estimate, the board finds the Analysis has little probative value.

The Town was represented by Steven Allen, an assessing consultant with Bret S. Purvis and Associates. At the hearing, the Town submitted Municipality Exhibit No. C which included a listing of seven land sales and nine improved sales the Town claimed supported the assessment. The board notes Exhibit C was compiled by Edward Elcik, apparently the assessing agent for the Town at the time the appeal was filed. Mr. Elcik, however, did not attend the hearing. The board finds the mere listing of the various vacant and improved sales with very limited supporting testimony or evidence to illustrate how these sales compare specifically to the various attributes of the Property to be unpersuasive that the Property's assessment was accurate.

For all the previously stated reasons, the board finds the proper assessment to be \$426,200.

If the taxes have been paid, the amount paid on the value in excess of \$426,200 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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Michele E. LeBrun, Member

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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: Thomas W. Christenson, 3 Meeting Rock Drive, Atkinson, NH 03811, Taxpayer; and Chairman, Board of Selectmen, Town of Atkinson, 21 Academy Avenue, Atkinson, NH 03811.

Date: 5/25/06

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Anne M. Stelmach, Clerk