

Thomas and Debra Johnson

v.

Town of Exeter

Docket No.: 20656-04PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2004 abated assessment of \$574,200 (land \$151,000; building \$423,200) on Map 18/14/Lot 5, a single-family home on 5.12 acres at 81 Beech Hill Road (the “Property”). For the reasons stated below, the appeal for abatement 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.

Subsequent to the hearing, the board took a view of the Property on August 31, 2007. The board viewed the Property from Beech Hill Road, other properties on Beech Hill Road, the general neighborhood and some of the comparable sales submitted by the parties.

The Taxpayers argued the assessment was excessive because:

- (1) the Property was purchased on March 30, 2004 for \$513,000 and the sale price is supported by an appraisal performed by Mr. Richard Thomas, a New Hampshire licensed residential appraiser (the “Thomas Appraisal”), which estimated a similar market value (\$519,000) on March 4, 2004;
- (2) the \$513,000 sale price reflects the Property’s market value because it was marketed by a realtor for a sufficient time (84 days) to give it adequate public exposure prior to the sale;
- (3) the Town originally assessed the Property at \$616,000; after correcting some errors on the assessment-record card, the Town proposed a revised assessment of \$569,600 (Taxpayer Exhibit No. 3), but the assessment was not reduced to this value;
- (4) after the Taxpayers filed their abatement application, the Town changed the assessment to \$574,200;
- (5) Beech Hill Road, where the Property is located, has mixed uses including mobile homes and businesses (see Taxpayer Exhibit No. 9), and is not an executive neighborhood like the neighborhoods where the Town’s comparables are located (see Taxpayer Exhibit No. 7); and
- (6) the Property’s high taxes would be unaffordable for some people.

The Town argued the assessment was proper because:

- (1) the purchase price may have been below market value because the Property was built and sold as a “spec house” by a developer who is not active in the Town;
- (2) the Thomas Appraisal was performed for financial lending purposes, not for tax assessment purposes, and should be given little weight because appraisals done for this purpose usually estimate a value close to the amount necessary to obtain the desired mortgage and, although the Thomas Appraisal refers to an addendum, none was provided to the Town;

(3) the Town performed a sales analysis but does not attempt to “match” assessments of specific properties to their sale prices;

(4) as shown on Taxpayer Exhibit No. 4, a listing of homes of similar style and size (square footage) indicates the Property sold at the low end of the range of prices per square foot and the abated assessment (\$574,200) is also within the range of values (as shown on the assessment-record cards for these properties contained in Municipality Exhibit No. B);

(5) Municipality Exhibit No. A supports the land value of \$151,000 which is equitable and proportional;

(6) while there is a mix of home styles on “lower” Beech Hill Road, the Property’s immediate area warranted a separate neighborhood adjustment because it is distinctive and is near conservation land;

(7) a nearby property (90 Beech Hill Road) sold for \$665,000 on April 1, 2005 and the photographs show a number of quality homes in this neighborhood (see Municipality Exhibit No. C);

(8) the appeal should focus on the market value of the Property, not the taxes any taxpayer must pay;

(9) the Town uses the median ratio for assessment purposes and the median ratio computed by the department of revenue administration for tax year 2004 was 96.7%;

(10) the abated assessment is in the acceptable range of values for a proportional assessment;
and

(11) the Town updates assessments every year; therefore, this appeal only concerns tax year 2004.

Board's Rulings

The board finds the proper assessment to be \$496,100 (rounded), based on a market value finding of \$513,000 and the Town's 96.7% general level of assessment.

The Taxpayers purchased the Property on March 30, 2004 for \$513,000. The Taxpayers testified the Property had been listed and marketed publicly through a professional realtor for 84 days prior to its purchase. During marketing, the Property's listing price was \$519,000. The Taxpayers provided a listing sheet which included, in addition to the pertinent information relative to the structure and the land, a line that reads "Sold On Mar 30 2004 For \$513000.00 By George T MacGown of Vernon A Martin Inc." The Taxpayers testified the selling price was an accurate indication of the Property's market value on April 1, 2004. In rebuttal, the Town argued the selling price should not be considered the Property's market value, as the Property was constructed and marketed by a developer who was not active in the Town. The Town further argued the fact the Property was developed as a "spec house" and was the only house the developer had built in the Town further precludes the selling price from being an accurate representation of its market value.

In addition to the listing sheet and selling price evidence, the Taxpayers provided a copy of the Thomas Appraisal performed to secure a mortgage on the Property. They argued the appraisal's \$519,000 estimate of market value supported the Property's selling price. The Town rebutted this testimony by stating the appraisal's purpose for loan financing made it unreliable as an accurate indicator of the Property's market value. The Town testified appraisals performed for financing purposes are frequently "bogus" as they tend to just hit the asking or selling price of the property in question in order to ensure the transaction is finalized.

The board finds the Property's sale price of \$513,000 on March 30, 2004 is the best

indication of its market value on April 1, 2004. Assessments must be based on market value.

(See RSA 75:1.) The board heard substantial testimony regarding the sale of the Property and the circumstances surrounding it. While the sale price is not always conclusive evidence of a property's market value, in this appeal the board finds the Taxpayers demonstrated the sale was an arm's-length transaction and, therefore, finds the sale price is the best indicator of the Property's market value. The board has the discretion to evaluate and determine the credibility of the sale price being indicative of market value. See Society Hill at Merrimack Condo. Asso. v. Town of Merrimack, 139 N.H. 253, 256 (1994); and Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). Further, the fact the Property's sale occurred just two days prior to the assessment date (March 30 v. April 1) cannot be ignored if the sale is found to be, as the board determined, a valid, arm's-length transaction.

The Town testified it does not use the selling price of a single property to determine its assessment; rather it reviews the sales of many similar style properties to determine whether the appealed property is proportionately assessed. The board understands the Town made the assessment using a computer assisted mass appraisal ("CAMA") system. However, once an appeal is filed on a particular property, the review of the appeal should be property specific and not done on a mass basis. The Town did not do a property specific review in this case; rather the Town performed some general analyses showing ranges of the assessed values of similar style properties (Taxpayer Exhibit No. 4) as well as the value of similar house lots (Municipality Exhibit No. A). The board finds these general analyses do not prove the assessment is proportional, rather just that the assessment fits into a range at some point.

The Taxpayers also complained about the high amount of taxes they must pay, but this argument lacks merit. The amount of property taxes is determined by two factors: 1) the

Property's assessment; and 2) the municipality's budget. See generally International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor: i.e., the board decides whether or not the Property was overassessed, resulting in the Taxpayers paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The board, however, has no jurisdiction over the second factor: i.e., the municipality's budget. See Bretton Woods Co. v. Town of Carroll, 84 N.H. 428, 430-31 (1930) (abatement may be granted for disproportionality but not for issues relating to town expenditures); see also Appeal of Land Acquisition, 145 N.H. 492, 494 (2000) (board's jurisdiction limited to those areas stated in statute).

For these reasons the board finds the Taxpayers have carried their burden of proof and determines the proper assessment to be \$496,100, based on a market value finding of \$513,000 and the Town's 96.7% general level of assessment.

If the taxes have been paid, the amount paid on the value in excess of \$496,100 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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.

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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: Thomas and Debra Johnson, 81 Beech Hill Road, Exeter, NH 03833, Taxpayers; and Chairman, Board of Selectmen, Town of Exeter, 10 Front Street, Exeter, NH 03833.

Date: October 29, 2007

Anne M. Stelmach, Clerk