

**Robert and Dorothy Davidson**

**v.**

**Town of Exeter**

**Docket No.: 22032-05PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2005 assessment of \$388,300 (land \$82,700; building \$305,600) on Map 63/Lot 106, a single family home on a 0.75 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) the value placed on the basement portion of the dwelling is disproportionate to its cost;
- (2) a December 28, 2005 contractor’s quote, contained in Taxpayer Exhibit No. 1, estimated the cost to construct a replacement foundation, excluding any windows or floor, to be \$17,686;

- (3) the Property is located one house down from a commercially zoned area;
- (4) Epping Road is a major road with a high traffic count and resale of homes has been affected as a result; and
- (5) the Property's market value was \$350,000 on April 1, 2005.

The Town argued the assessment was proper because:

- (1) the Taxpayers' disjointed presentation used 2002 cost data and 2006 and 2007 assessment data rather than 2005, the year under appeal;
- (2) the selling price of 46 Epping Road, across the street from the Property, was significantly more than its assessment indicating there is no impact on value for the high volume of traffic; and
- (3) based on a review of similar properties in the Town (Municipality Exhibit No. A) the Property is assessed consistently and no abatement is warranted.

### **Board's Rulings**

Based on the evidence and testimony, the board finds the Taxpayers failed to prove the Property was disproportionately assessed.

Assessments must be based on market value. See RSA 75:1. The Taxpayers did not present any credible evidence of the Property's market value. To carry their burden, the Taxpayers should have made a showing of the Property's market value. This value would then have been compared to the Property's assessment and the general level of assessment in the Town. See e.g., Appeal of N.E.T. Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

The Taxpayers argued the \$63,032 assessment on the basement portion of the dwelling is substantially more than the actual cost to pour a replacement concrete foundation. The Taxpayers obtained a quote from Thomas S. McAllister Poured Foundations for a foundation similar to the one under their dwelling. Mr. McAllister's estimate was \$17,686. The Taxpayers testified the discrepancy between the replacement cost and the assessment warranted an abatement. The board finds this argument unpersuasive. Cost does not necessarily equal value. The contributory value of the basement to the overall value of the Property can be greater than the cost of the basement. When properties transfer, buyers and sellers do not purchase or sell the various individual components of the properties. For instance, they do not sell the building and then sell the land. Properties, especially residential properties, are bought and sold as an entire bundle of rights which captures all of the various components' contributory values. The cost of an individual item does not always equate to its contributory value towards the overall value of the complete bundle of rights in real estate. Further, the board notes the Town made a property specific market adjustment when it considered the wet condition of the basement and made a 21% adjustment on the "special condition" line of the cost/market valuation section of the assessment-record card for this factor. The board finds this adjustment is reasonable based on the evidence.

The Taxpayers used assessment data and assessment-record cards from between 2002 and 2005. The board finds the earlier assessment data does not provide any probative assessment evidence to support the Taxpayers' position. Further, the Taxpayers inclusion of cost or assessment data from 2006 or 2007 without additional evidence of how the values were determined is not relevant in determining the Property's 2005 assessment. The Town submitted, in Municipality Exhibit No. A, a brief analysis of sales of similar properties. The properties

included were of comparable age, size and style to the Property. The board finds the analysis is some evidence the Property is assessed consistently compared to similar properties in the Town. The Town testified it did annual updates of all assessments by reviewing all sales by the various strata including single family residences, mobile homes, condominiums and commercial and industrial properties and the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

In Taxpayer Exhibit No. 1, the Taxpayers indicated the heavy flow of traffic on Epping Road negatively impacted the values of the properties in their neighborhood. Again, the Taxpayers provided no market evidence to support their assertion. In rebuttal, the Town testified the selling price of 46 Epping Road, across the street from the Taxpayers, was higher than its assessed value which is some indication properties in the neighborhood are not over assessed.

For all these reasons the board finds the Taxpayers failed to prove their burden of proof to show the Property was disproportionately assessed and the appeal is therefore 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

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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: Robert and Dorothy Davidson, 45 Epping Road, Exeter, NH 03833, Taxpayers; and Chairman, Board of Selectmen, Town of Epping, 10 Front Street, Exeter, NH 03833.

Date: May 19, 2008

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Anne M. Stelmach, Clerk