

**Frank and Marianne Handibode**

**v.**

**Town of Hebron**

**Docket No.: 24015-08PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$650,500 (land \$383,400; building \$267,100) on Map 23/Lot 2-6, a single family home at 66 Panorama Lane on 5.00 acres (the “Property”). For the reasons stated below, the appeal for abatement is granted to the Town’s proposed revised assessment.

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 but only to the Town’s revised assessment of \$648,600.

The Taxpayers argued the assessment was excessive because:

(1) a review of the median selling prices for single family homes in Grafton County and the State of New Hampshire shows a decline in property values in 2008;

(2) the sale of a very similar property directly across the street (73 Panorama Lane) indicates the Property is overassessed;

(3) the Town should not have used sales which occurred after the assessment date; and

(4) an analysis comparing the Property to 73 Panorama Lane indicates the Property's April 1, 2008 market value was \$474,850.

The Town proposed a revised assessment of \$648,600 and argued the revised assessment was proper because:

(1) the sale price of the property across the street may not be an accurate indication of that property's market value;

(2) it is more appropriate to use the department of revenue administration's (the "DRA") market changes for the Town than county or state-wide market change indications; and

(3) an analysis using comparable sales indicates the Property is not overassessed.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be the Town's revised assessment of \$648,600. The revised assessment is based on the Town's review of the Property and a correction of the living area square footage and the story height.

The Taxpayers primary basis for a tax abatement rests on the sale of the property at 73 Panorama Lane, across the street from the Property. They testified the two properties were very similar in that they were constructed at nearly the same time, contained nearly the identical amount of living area, the same number of bedrooms and bathrooms and the same "A4" quality rating. For several reasons, the board finds the sale price of 73 Panorama Lane can not be relied upon as an accurate indication of that property's market value because of unanswered questions regarding the arm's-length nature of that transaction. The Town testified that although the

various sale prices indicated on the assessment-record card taken from the deeds show selling prices more than \$175,000 less than the assessment, none of the previous owners involved in those transactions ever filed a tax abatement request. Further, the Town testified none of the previous owners responded to the assessor's inquiries regarding that property's multiple transfers. In addition, the Town's assessor stated he had not been able to inspect the interior of this sale property. For all these reasons, the board finds the sale price indicated for 73 Panorama Lane is not a reliable estimate of that property's market value.

Because the Taxpayers' residential market analysis, contained in Taxpayer Exhibit 2, relied solely on the 73 Panorama Lane sale, its value conclusion is flawed. The only significant adjustment made was for the maximum difference in assessed values between the two properties during a span from 2002 to 2008. Adding this assessed value differential to the selling price of 73 Panorama Lane yielded a market value indication for the Property, according to the Taxpayers, of \$474,850. For the reasons previously discussed, the board gives this analysis little weight given the questionable arm's-length nature of the transaction for the comparable sale property.

The Taxpayers further argued the median sale price of a single family residence in New Hampshire and, more specifically, in Grafton County was dropping significantly and should be a factor and an indication that the Property's assessment should be reduced. The Town's assessor testified the median ratio for the Town from 2006 to 2007 indicated property values were increasing generally by about 5%. From 2007 to 2008, property values were stable in the Town and from 2008 to 2009 property values decreased. The board finds these Town-specific ratios determined by the DRA are more localized and are better indications of the market conditions

affecting the Property during those time periods than the county or state-wide indications supplied by the Taxpayers.

Assessments must be based on market value. See RSA 75:1. The board finds the best evidence of the Property's market value is the Town's comparable sales report contained in Municipality Exhibit A. The Town compared the Property to three properties that sold, including the one across the street at 73 Panorama Lane. The adjustments made to each of the comparable sales were based on the Town's assessment model and reasonably account for dissimilarities between the Property and the three comparables. After reviewing the market value indications provided by each of the sales and giving the most weight to comparable sale 3 and little weight to the 73 Panorama Lane sale, the Town estimated the Property's market value to be \$700,000 on April 1, 2008. When factored by the Town's 0.945 equalization ratio for the 2008 tax year, this market value estimate indicates an assessment of \$661,500 which supports the Town's proposed revised assessment of \$648,600. Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). The board finds the Town's comparable sales report provides reasonable support for the proposed revised assessment.

At the hearing, the Taxpayers testified the Town's use of two comparable sales which occurred after the assessment date was inappropriate and should not be allowed. The board finds the use of comparable sales which occurred after the assessment date is not inappropriate as long as any necessary adjustments are made to account for changes in market conditions (time) between the time the sales occurred and the effective assessment date, in this case April 1, 2008. These changes are made to reflect what the selling price of the comparable property would have been as of the assessment date. Town Comparable Sale 2, which occurred in September 2008,

required no adjustment because it occurred during the time frame when the DRA determined the market was stable in the Town. A substantial adjustment was made to Comparable Sale 3, which occurred in August 2010, to reflect the state of the real estate market in 2010 versus 2008. This finding is consistent with board holdings in other decisions. Cf., for example, Savoie v. Town of Loudon, BTLA Docket Nos.: 10009-90PT and 11802-01PT (March 30, 1994). “[I]n setting assessments, the selectmen should review market information to arrive at proper assessments. It is also true that sometimes sales after April 1 will be available and used either by the Town or by the board, but in all cases those sales must be trended back to the April 1 date.”

For all these reasons, the board finds the Town’s reviewed assessment of \$648,600 is reasonable.

If the taxes have been paid, the amount paid on the value in excess of \$648,600 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.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) 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(g). Filing a rehearing motion is a prerequisite

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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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

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: Frank M. and Marianne Handibode, 66 Panorama Lane, Hebron, NH 03241, Taxpayers; Chairman, Board of Selectmen, Town of Hebron, PO Box 188, Hebron, NH 03241; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: December 29, 2010

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Anne M. Stelmach, Clerk