

**Bernadette M. Dee Revocable Trust**

**v.**

**Town of Albany**

**Docket No.: 24070-08PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$635,700 (land \$126,600; building \$509,100) on Map 9/Lot 141, 79 Moat View Drive, a single family home on 2.19 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 board finds the Taxpayer carried this burden, but only to the amount recommended by the Town’s assessor at the hearing.

The Taxpayer, represented by her husband, William Dee, argued the assessment was excessive because:

(1) while the Property was purchased in March, 2007 for \$635,000, since the time of purchase real estate prices have decreased substantially, with higher valued properties falling in price at a higher rate; and

(2) a survey of asking and selling prices and the listing sheets attached to the appeal document support the conclusion that, because of falling property values, the assessment should be abated (by about 15%) to \$539,750.

The Town, represented by Jason Call, its assessing contractor, argued the assessment, with the slight adjustment noted below, is proper because:

(1) the Town did a revaluation in 2005 and is doing a statistical update in 2010;

(2) an interior inspection of the Property was performed by Mr. Call in February, 2010 and the Town is willing to make some corrections to the assessment-record card to improve the accuracy of the data, resulting in a slightly lower assessment of \$621,700 (as shown in Municipality Exhibit C);

(3) the Town reviewed the abatement application and found the Taxpayer's arguments for abatement to be without merit because the Taxpayer's comparison of asking prices and selling prices is misleading and unreliable since many property owners set inflated or unrealistic asking prices (see Municipality Exhibit A);

(4) the Property is in the nicest neighborhood in the Town, where there are five or six homes in a similar price range, and the \$635,000 purchase price of the Property in March, 2007, just one year before the assessment date, is a reasonable indicator of market value; and

(5) the Taxpayer failed to meet its burden of proving disproportionality (beyond the correction the Town is willing to make).

The parties stipulated the level of assessment in the Town was 101.3% in tax year 2008, the median ratio calculated by the department of revenue administration.

### **Board's Rulings**

Based on the evidence presented, the board finds the proper assessment to be \$621,700, the adjusted value recommended at the hearing by the Town's assessor, based upon his inspection of the Property and correction of several errors on the assessment-record card. The appeal is therefore granted, but only to this amount, not the lower assessed value the Taxpayer is seeking.

The Taxpayer did not present an appraisal or any market-based analysis specific to the Property to make the case that a substantial (15%) abatement is warranted, even though all assessments must be based on market value. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (2003). Instead, Mr. Dee relied entirely on some data attached to the appeal document which show differences in the 'asking' and selling prices of certain selected properties in several price ranges and the length of time each was on the market, along with three listing sheets from Badger Realty. The board's rules require each party to provide detailed information whenever either party intends to present evidence regarding comparable properties, including copies of the assessment-record card for each such properties, see Tax 201.33, but the Taxpayer did not comply with this rule. Without this information, it is difficult, if not impossible, to draw any meaningful comparisons between different properties or to conclude the Property is overassessed.

Further, the board is unable to place weight on the limited data presented regarding the spread between the asking and selling prices of other properties. Asking prices are set by sellers, usually, but not always, after consultation with a real estate broker and are not necessarily indicative of the price at which a property is likely to sell in the market or even the price the broker may think is ‘correct’ for that market or that time frame. See, e.g., Nelson v. Town of Washington, BTLA Docket No. 17791-98PT (August 2, 2000) (“An asking price does not meet the RSA 75:1 requirements [for proportionality] because it is not an agreed-to price as part of a consummated transaction. Consequently, reliance upon asking prices as primary indicators of market value for assessing purposes is misplaced as they are generally higher than actual transaction prices. Appraisal Institute, The Appraisal of Real Estate 156 (10th ed. 1992). Municipalities more appropriately should rely upon the prices of arm's-length sales as primary indications of market value to analyze and establish base rates.”).

There are various reasons why a property owner may set an asking price that is too high, such as a latent reluctance to sell, family conflicts over pricing and other terms of sale, lack of relevant market information or even something as obvious as a greed factor. All other things being equal, an unrealistically high asking price is likely to lengthen the marketing time for sale of a property and enlarge the gap between the initial asking price and the final selling price. In light of these facts, the board is unable to attach any probative weight to the information attached to the appeal document by the Taxpayer. (The attachment further states the real estate market “imploded” in September, 2008, whereas the relevant date for assessment purposes is April 1, 2008.<sup>1</sup>)

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<sup>1</sup> See also Municipality Exhibit A, where the Town’s Selectmen state “the real drop in the real estate market happened during the summer and fall of 2008.”

The Town, for its part, noted the Taxpayer purchased the Property in March, 2007, just about one year before the April 1, 2008 assessment date, for \$635,000, a price which is quite close to the assessed value of \$635,700 set by the Town. See Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988) (“the price paid by the owner is one of the best indicators of that property’s value,” quoting from Poorvu v. City of Nashua, 118 N.H. 632, 633 (1978)). The Town’s assessing contractor, Mr. Call, also stated the Property is located in the nicest neighborhood where there are other homes in this price range.

Mr. Call performed an interior inspection in February, 2010 and recommended a slight adjustment to \$621,700 to reflect the correction of certain information on the assessment-record card. The board finds this adjustment is reasonable and the Taxpayer failed to meet its burden of proving the Property is entitled to a larger abatement for tax year 2008.<sup>2</sup>

If the taxes have been paid, the amount paid on the value in excess of \$621,700 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

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<sup>2</sup> A \$621,700 assessment represents an equalized market value of \$613,700 (rounded), calculated by dividing the assessment by 101.3%, the level of assessment in the Town in tax year 2008 noted above. That equalized market value represents a drop of about \$21,300 from the price paid for the Property (\$635,000), indicative of some decline in market value, but not, of course, to the extent claimed by the Taxpayer.

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 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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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Bernadette M. and William Dee, 39 Governor Wentworth Road, Amherst, NH 03031, Taxpayer's representatives; Chairman, Board of Selectmen, Town of Albany, 1972-A Route 16, Albany, NH 03818; and Northtown Associates, LLC, 1794 Presidential Highway, Jefferson, NH 03583, Contracted Assessing Firm.

Date: July 2, 2010

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Anne M. Stelmach, Clerk