

James A. and Jean M. Grenier

v.

Town of Fremont

Docket No.: 24358-08PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$390,300 (land \$118,700; building \$271,600) on Map 03/Lot 188/002/004, a single family home on 7.95 acres (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.

The Taxpayers argued the assessment was excessive because:

- (1) an August 7, 2009 appraisal prepared by Christine Loughnane, Pathway Appraisal, LLC (the “Loughnane Appraisal”) indicated a market value of \$320,000;
- (2) the Property has been on the market for 3½ years listed at \$420,000 in December, 2006, dropping to \$350,000 in April, 2008 and is currently listed for \$299,900;

(3) the Property is on a cul-de-sac in a subdivision, has less privacy than others with more frontage, is not subdividable, slopes and is at least half in wetlands; and

(4) the Town taxes are unaffordable and continue to increase as values of homes decrease.

The Town argued the assessment was proper because:

(1) it is accepting the Loughnane Appraisal at face value; adjusting the appraised value “based upon the change in the assessment ratio from 2008 to 2009” supports the Town’s 2008 assessment;

(2) the Property’s excess land has been adjusted by 50% because it is wet; however, no adjustment to the basic site is warranted because there is no market evidence to support an adjustment; and

(3) the Property’s assessment is fair and equitable.

The parties agreed the level of assessment was the median ratio of 104.6% as calculated by the department of revenue administration.

Board’s Rulings

Based on the evidence, the board finds the proper assessment to be \$366,100 based on a market value estimate of \$350,000 and the 2008 median ratio of 104.6% ($\$350,000 \times 1.046$).

The board’s \$350,000 estimate is exactly that, an estimate based on considering and weighing the varying evidence submitted. The board gives some weight to the August 7, 2009 Longname Appraisal of \$320,000 but notes (as the Municipality’s Exhibit D calculations exhibit) that estimate of market value is more than a year subsequent to the April 1, 2008 assessment date and the declining market needs to be accounted for.

The board understands the intended purpose of the Town's calculations contained in Municipality Exhibit D but also places less than conclusive weight on them because such ratios are general in nature of market change as opposed to being property specific.

Because the Taxpayers were uncertain of the exact dates and listing prices in its attempts to sell the Property, the board reviewed the Property's listing history, which is available at the Northern New England Real Estate Network ("NNEREN") website. NNEREN provided the following: listing of the Property was initiated in December 2006 for \$422,000, dropped to \$389,900 by the beginning of 2008, dropped further to \$369,900 through the end of 2008, and is currently listed at \$299,900. The board considered these marketing attempts before and after the 2008 tax year, but has not given the listing history conclusive weight as to the market value of the Property.

The board also reviewed the description and photographs contained in the Loughname Appraisal as to the quality, layout and other features of the dwelling. Based on the board's review, we conclude the Property is slightly above average in the amount of square footage and has a relatively small, average kitchen which would detract from the value and marketing of the Property. Considering this factor and giving partial weight to the listing history of the Property and the Longhname Appraisal and the sales information of its comparables (as shown on the assessment-record cards submitted by the Town), the board concludes the April 1, 2008 market value for the Property was approximately \$350,000. Applying the agreed upon median ratio of 1.046% arrives at an assessed value of \$366,100.

If the taxes have been paid, the amount paid on the value in excess of \$366,100 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(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

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: James A. and Jean M. Grenier, 62 Victoria Farms Road, Fremont, NH 03044, Taxpayers; Chairman, Board of Selectmen, Town of Fremont, PO Box 120, Fremont, NH 03044; and Municipal Resources, Inc., 295 No. Main Street, Salem, NH 03079, Contracted Assessing Firm.

Date: July 2, 2010

Anne M. Stelmach, Clerk