

Laura Ray

v.

Town of Hanover

Docket No.: 24837-09PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2009 abated assessment of \$712,100 (land \$177,300; building \$534,800) on Map 12/Lot 229-1, 8 Purling Brooks Drive, a single family property on 1.50 acres (the “Property”). 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. To establish disproportionality, the Taxpayer must show the Property’s assessment was higher than the general level of assessment in the municipality. See RSA 76:16-a; Tax 201.27(f); Tax 203.09(a); and, e.g., Appeal of City of Nashua, 138 N.H. 261, 265 (1994). For the reasons stated below, the appeal for further abatement is granted.

The Taxpayer argued the assessment was excessive because:

(1) the Town erred in changing the “Grade” factor ascribed to the Property from a “6” to an “8” and then back to a “7”:

(2) the evidence presented in Taxpayer Exhibit Nos. 1-4 demonstrate the Town erred in doing so to increase the assessment and also erred in not correcting several errors regarding the physical description of the Property on the assessment-record card; and

(3) the assessment should either be \$668,400, the assessment for tax year 2008 based on a Grade “6,” or should be adjusted further, due to the correction of the errors noted, to the \$659,500 value stated in her appeal document.

The Town argued the assessment, as already abated, was proper because:

(1) a Town-wide revaluation was completed in tax year 2008, but the Town reassessed properties on Purling Brooks Drive (the “Brooks development”) again in 2009 because, after inspecting a house that sold, the assessor determined there was a need for review and possible adjustment for quality of construction;

(2) the Town was unable to inspect the Property, despite making a request of the Taxpayer to do so, and therefore adjusted the Grade of the Property from a “6” to an “8” without the benefit of an inspection, which increased the Property’s assessment from \$668,400 to \$766,600; and

(3) after the Taxpayer filed her abatement application, the Town inspected the Property, revised its grade from an “8” to a “7,” abated the assessment from \$766,600 to \$712,100 and no further abatement is warranted.

Board’s Rulings

Based on the evidence presented, the board finds a proportional assessment for tax year 2009 is \$664,300, rounded. The appeal is therefore granted for the following reasons.

The Property is a large, single-family home acquired by the Taxpayer when it was completed in the Fall of 2005. The Taxpayer purchased the Property for a “net cost” of \$677,361, after a \$3,000 credit from the builder. (See Taxpayer Exhibit No. 3, Tab 6, p. 6.1.)

The Property is one of ten homes in the Brooks development located on the same street: Purling Brooks Drive. (See attachment to the appeal document.) The ten homes, when built according to the preferences of the buyers, have different features and finishes which affected their respective sale prices. Homes in the Brooks development sold at various times (from 2005 to 2009) for prices ranging from \$651,000 to \$995,000. (Id.)

The Taxpayer presented a large number of documents and extensive testimony to support her claim the Town erred in changing the grade of the Property from Grade “6,” the grade ascribed to the Property in the 2008 Town-wide revaluation. The Town’s “Grade Factors” are enumerated and described in the 2008 assessment manual and the relevant portions of this document are contained in Taxpayer Exhibit No. 3, Tab 9, p. 9.7. Without dwelling on the many points presented at the hearing by the Taxpayer, the board notes the physical attributes of the Property are generally not disputed by the parties and are well described in the photographs, architectural drawings and testimony. Therefore, the board finds the Property is best characterized as a “06 – Good Quality House” under the Town’s rating system, rather than a higher grade.¹ The Town was obligated to apply these descriptions consistently throughout the Town in order to arrive at proportional assessments.

¹ The Town determined a Grade 6 house is one with:

Good quality workmanship and materials used throughout, a combination of above average and custom interior features including trim, kitchen & baths, lighting, floor covering and fixtures, exterior good quality and design, (sic) may have some custom windows and cathedral areas and roof may have multiple angles.

The board compared this description to the Town’s description of a Grade 7 house:

All of the above, but with greater attention to detail and workmanship, custom trim, custom kitchen and/or baths. Multiple high quality floor coverings, excellent design and curb appeal. Generally multi-floor (sic)with angles and/or roof cuts. Usually includes high quality built-ins (sic) cabinets, bookcases and shelving. Many extra features.

Adjusting the Grade results in an abated assessment of \$664,300, rounded, for tax year 2009. The board arrived at this finding by using an estimated effective living area of 3,649 and an adjusted base rate of \$134.85, using the information on the assessment-record cards submitted by the parties and a Grade “6” quality factor. (The board also used the land value of \$177,300 and the extra features value of \$4,800, neither of which were in dispute in this appeal.) The board further notes the Town’s assessor did make some corrections to the assessment-record card that the Taxpayer brought to his attention, such as the “bump out” issue and a corrected finished basement area measurement.

As additional support for the board’s findings, the board looked to the purchase price of the Property, which was \$677,361. Although the purchase of the Property occurred several years prior to the April 1, 2009 assessment date, there was no evidence of any net appreciation or depreciation as of this assessment date. The price is therefore supportive of the abatement assessment (\$664,300) arrived at by the board.

The board considered all of the Taxpayer’s other arguments, including issues pertaining to a minor square footage difference (of 72 feet) due to an entryway with a cathedral ceiling, before concluding these items were not material to the determination of a proportional assessment for tax year 2009. As the board has often noted, there is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which represents a reasonable measure of a proportional tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979). In addition, relatively minor or innocuous errors do not necessarily result in disproportionality warranting a further tax abatement. “Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant.” Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985), quoting Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200,

205 (1899). Based on this reasoning, the board finds \$664,300, rounded, is a proportional assessment on the Property.

For all of these reasons, the board finds the tax year 2009 assessment should be abated to \$664,300. The appeal is therefore granted.

If the taxes have been paid, the amount paid on the value in excess of \$664,300 for tax year 2009 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 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).

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Albert F. Shamash, Esq., Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Laura Ray, 8 Purling Brooks Drive, Hanover, NH 03755, Taxpayer; and Chairman, Board of Selectmen, Town of Hanover, PO Box 483, Hanover, NH 03755

Date: 3/16/12

Anne M. Stelmach, Clerk