

Patricia Lore and John Franchi

v.

Town of Antrim

Docket No.: 25124-09PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2009 abated assessment of \$401,210 (land \$226,160; building \$175,050) on Map 206/Lot 021, 41 Jackman Shores, a single family home on a 0.581 acre lot (the “Property”). For the reasons stated below, the appeal for further abatement is granted, but only to the amount recommended by the Town at the hearing.

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 abated assessment was still excessive because:

- (1) during the tax year 2009 revaluation, the Town inspected the Property and determined it had two bedrooms (rather than four), had a shared well and the square footage was overestimated by 208 square feet, but the total assessed value still went up by a larger percentage than other properties, even though there was no physical change to the Property since the last revaluation;
- (2) as shown in the grid in Taxpayer Exhibit No. 1, even if the Town's \$363,410 recommended assessment for tax year 2009 is considered, the Property's assessment increased by eight percent, more than four times the average for other Jackman Shores properties;
- (3) the assessment of the most comparable property, 8 Jackman Shores, did not increase as much as the Property's assessment, even though that house has been upgraded; and
- (4) a revised assessment should be based on the Property having a \$290,000 market value, resulting in a further tax abatement.

The Town recommended the assessment should be revised to \$363,410, but no lower, and this is proper because:

- (1) the purpose of the tax year 2009 revaluation was to improve proportionality and correct any prior assessment inequities throughout the Town;
- (2) the previous owner of the Property had refused to let the Town inspect the interior of the house, which may have resulted in the Property being underassessed in earlier years, thereby impacting the percentage increase that occurred in 2009;
- (3) as a result of the Town's inspection in tax year 2009, the Town was able to more accurately depict the improvements on the assessment-record card, including adjusting for the "grade" of the improvements, the bedroom count, the shared well and the amount of living area; and

(4) while the Town already abated the assessment at the local level (from \$411,860 to \$401,210), the further abatement recommended by the Town (to \$363,410) is fair and equitable.

The parties agreed the level of assessment in the Town was 98.1%, the median ratio calculated by the department of revenue administration for tax year 2009.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$363,410, the value recommended by the Town at the hearing. The appeal is therefore granted for the reasons discussed below.

As the first issue at the hearing, the Taxpayers objected to the Town's list of comparable properties because they did not receive it at least fourteen (14) days prior to the scheduled hearing date. This objection was overruled since the Town complied with the board's rules by mailing the list in time to meet the 14-day deadline, which is based on the date the mailing was postmarked, not the date it was received by the Taxpayers. See Tax 102.28 and Tax 201.33. After making this ruling, the board then proceeded to consider the merits of this tax abatement appeal.

The Taxpayers purchased the Property for \$415,000 in July, 2009, well above the equalized value of the abated assessment recommended by the Town at the hearing (\$363,410 divided by 98.1% level of assessment = \$370,500 (rounded) indicated market value). One of the Taxpayers testified they overpaid for the Property because of their strong desire to own a waterfront home in this neighborhood.

The Taxpayers failed to prove, however, the Property had a market value of only \$290,000 as of the assessment date (April 1, 2009), \$125,000 or more than 30% less than they

paid for it just three months later. They did not present an appraisal or any other market value evidence, but instead relied on the comparative assessment information discussed below.

First, they argued their assessment increased at a greater percentage than other properties in the “Jackman Shores” neighborhood in the 2009 revaluation. Such evidence, however, does not establish the Property is disproportionately assessed. See Appeal of Town of Sunapee, 126 N.H. 214 (1985). A greater percentage increase in an assessment following a municipal reassessment or update does not prove disproportionality since unequal percentage increases are inevitable following such reassessments. RSA 75:8 requires municipalities to examine all real estate in the municipality on an annual basis and reappraise such real estate as has changed in value. The Town’s revaluation fulfilled this statutory purpose and was intended to remedy past inequities and, thus, it was not unusual for the new assessments to vary between properties, both in absolute numbers and in percentage changes from the prior assessments. In addition, the prior owners of the Property had refused to allow the Town to inspect it and therefore the prior assessment was based on inaccurate data and may have been unduly low.

Second, a detailed comparison of 8 Jackman Shores to the Property shows the Town followed a consistent methodology and the Property is not overassessed in relation to this other property. The lot size of 8 Jackman Shores (0.26 acres) is less than half the size of the Property (0.58 acres). The land is assessed at \$26,000 less than the Property (\$189,000 compared to \$215,410) and the board finds this value difference is reflective of how the market would value size differences in waterfront lots. The building assessment for 8 Jackman Shores is \$159,660 compared to \$148,000 for the Property. Both are graded “Avg+” in quality and in good condition and are similar in age. (See Municipality Exhibits B and C.) One factor lowering the

assessment of the Property is the minus 10% functional obsolescence adjustment (increased from 5% in the prior assessment).

Given the emphasis both parties placed on 8 Jackman Shores as the best comparable to the Property, the board finds this comparison supports the Town's position that the Property is not overassessed once the assessment is lowered by the amount recommended by the Town (to \$363,410, as shown in Municipality Exhibit C). In other words, the board finds the slightly higher total assessment of the Property compared to 8 Jackman Shores (\$363,410 - \$348,660 = net difference of \$14,750, about four percent) appears to be reasonably supported by the differences in lot size and other features.

The board therefore finds the tax year 2009 assessment should be abated to the \$363,410 assessed value recommended by the Town. The board therefore grants the appeal to this amount, not the amount asserted by the Taxpayers.

If the taxes have been paid, the amount paid on the value in excess of \$363,410 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).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Patricia Lore and John Franchi, 2 Potter Hill Drive, Guilford, CT 06437, Taxpayers; Chairman, Board of Selectmen, Town of Antrim, PO Box 517, Antrim, NH 03440; and Commerford Nieder Perkins, LLC, 556 Pembroke Street - Suite #1, Pembroke, NH 03275, Contracted Assessing Firm.

Date: November 17, 2011

Anne M. Stelmach, Clerk