

Linda and Gary Jacobson

v.

Town of Brookline

Docket No.: 25486-10PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2010 abated assessment of \$321,300 (land \$129,500, building \$187,600, and features \$4,200) on Map G/Lot 44/1, 85 Averill Road, a single family home on two acres (the “Property”). For the reasons stated below, the appeal for abatement is denied.

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 board finds the Taxpayers failed to prove disproportionality.

The Taxpayers argued the abated assessment was still excessive because:

(1) as shown in Taxpayer Exhibit No. 1, the house constructed on the Property requires substantial work to be completed in order to be marketable and a real estate broker (Bronwen

Pritchard of BH&G The Masiello Group) recommended, in December, 2010, a listing price between \$272,657 to \$289,523 for the Property assuming the work is completed;

(2) as shown in Taxpayer Exhibit No. 4, the cost to complete this work is estimated at \$27,260 and should be deducted from the assessed building value;

(3) the Town's assessed land value is too high, based on the land sales in Taxpayer Exhibit Nos. 2 and 3;

(4) the Town should not assess the shed because it contains less square footage (96) than the minimum required by the Town's ordinances (100 feet); and

(5) the assessment should be abated to \$237,840 (based on a reduced land value of \$74,500, a reduced building value of \$160,340, and a reduced features value of \$3,000).

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

(1) the Town performed an inspection and abated the assessment based on a reasonable estimate (\$22,000) of the cost to complete the unfinished items (see Municipality Exhibit A, where an additional 10% temporary depreciation is applied to the building value to reflect this estimate);

(2) the land sales presented by the Taxpayers are of raw land (no clearing, grading, well, septic and/or permits), but the Property is already improved with these items and therefore the value of the land is no doubt higher than these raw land sales;

(3) the analysis of ten comparable sales in Municipality Exhibit B supports the proportionality of the abated assessment and the range of value (\$252,520 - \$292,730) is also consistent with the Masiello listing price (presented by the Taxpayers in Taxpayer Exhibit No. 1);

(4) regardless of the size of the shed, it has a contributory value (\$1,220) which the Town properly took into account; and

(5) the appeal should be denied.

The parties agreed the level of assessment in the Town for tax year 2010 was 119.2%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property (with an abated assessment of \$321,300) was disproportionally assessed. The appeal is therefore denied for the following reasons.

In New Hampshire, proportionality requires that assessments be based on market value adjusted by the level of assessment. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). Thus, the Taxpayers had the burden of establishing the market value of the Property was less than \$269,500, rounded, as of the April 1, 2010 assessment date. (\$321,300 abated assessment divided by 119.2% level of assessment = \$269,547.)

The board considered each of the Taxpayers' arguments but is unable to agree they establish the Property was overassessed for tax year 2010. The Town, after inspecting the Property, abated the assessed value to take into account the cost of finishing the house by applying an additional 10% temporary depreciation. The dollar amount of this depreciation (\$22,000) is relatively close to the Taxpayers' estimate of \$27,260 for the completion work. The board finds the Taxpayers' estimate is less reasonable because it appears to include some amount of cosmetic and/or ordinary wear and tear items (such as carpet replacement) rather than detailing only items that would require completion so that the Property could be sold with mortgage financing from an institutional lender. The Town's assessor reviewed the Taxpayers' cost estimate and reasonably concluded "it is over-stated as it appears to include additional work that is part of normal maintenance on the home and is not reflective of only the unfinished items but additional work as well." (See Municipality Exhibit B, p. 1.)

The board is unpersuaded that the undeveloped lot listing and sales in Taxpayer Exhibit Nos. 2 and 3 support a lower assessed land value. Land that has been improved with tree cutting, grading, sewer and septic, in the board's experience, commands a higher market value than raw land and the Town was not unreasonable in taking these factors into account in arriving at an assessed value for the land. Additionally, the Taxpayers only presented very limited information regarding these land sales, no information regarding how these lots differ from the Property and no indication of what adjustments might be appropriate to account for those differences.

The board also cannot agree that, because the shed is slightly smaller than the minimum prescribed in the Town's ordinance (96 feet rather than 100 feet), this means it cannot be assessed. On the contrary, the board agrees with the Town the shed contributes value to the Property and is therefore assessable. The value assigned by the Town for this features value (\$1,220) is quite nominal and appears to be reasonable.

Finally, the board finds the Town's analysis of ten sales in the Town (in Municipality Exhibit B) is supportive of the abated assessment. After making reasonable adjustments for the unfinished items and other differences, this analysis indicates a value range for the Property, as of the April 1, 2010 assessment date, of "\$252,520 to \$292,730." The equalized value of the abated assessment noted above (\$269,500) falls within the lower part of this range. There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality's general level of assessment, represents a reasonable measure of proportionality and the resulting tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

For all of these reasons, the appeal is denied.

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

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: Linda and Gary Jacobson, 85 Averill Road, Brookline, NH 03033, Taxpayers; Chairman, Board of Selectmen, Town of Brookline, PO Box 360, Brookline, NH 03033; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: February 19, 2013

Anne M. Stelmach, Clerk