

**Albert Chaput, Eileen Chaput and Daniel Chaput**

**v.**

**Town of Allenstown**

**Docket No.: 25519-10PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2010 assessment of \$252,400 (land \$60,400; building \$192,000) on Map 110/Lot 030, 19 Sargent Drive, a two-family home on 1.2 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 board finds the Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) the three “Mudge Appraisals” (prepared by Lisa Mudge of Mudge Real Estate Services LLC and included in Taxpayer Exhibit No. 1) estimate the market value of the Property to be well

below the \$252,400 assessed value: \$198,000 (as of April 1, 2010); \$165,000 (as of December 16, 2010); and \$178,000 (as of April 1, 2011);

(2) the Taxpayers purchased the Property for \$165,000 in January, 2011 (after the seller reduced the price from \$192,000); and

(3) the assessment for tax year 2010 should be abated to \$165,000.

The Town argued the assessment was proper because:

(1) the Town did not consider the \$165,000 purchase by the Taxpayers to be a qualified sale, because the Town's assessors concluded the prior owner intended to "flip" the Property shortly after he purchased it out of foreclosure (see Municipality A, p. 4) at a price not reflective of its market value;

(2) the Town's assessors considered two of the three sales in the Mudge Appraisal (estimating a \$198,000 market value as of April 1, 2010) to be unqualified sales because one (20 Mt. Delight Road) was a "Code 39" (divorcing parties) and the other (68 Mt. Delight Road) was a "Code 38" (sale to a related party) and, similarly, three of the sales in the later Mudge Appraisal (as of December 16, 2010) were also unqualified, one involving a short sale (21-23 Broadway), one an estate sale (109 Warren Street) and one a bank sale (9 Main Street); and

(3) the Town's own analysis of sales (in Municipality Exhibit A) supports the proportionality of the assessment and the appeal should be denied.

The parties agreed the level of assessment in the Town in tax year 2010 was 100%, the median ratio calculated by the department of revenue administration ("DRA").

**Board's Rulings**

Based on the evidence presented, the board finds the Taxpayers met their burden of proving disproportionality and the assessment for 2010 should be abated to \$200,000 for the reasons discussed below. The appeal is therefore granted.

Assessments must be based on market value, as prescribed in RSA 75:1. Proportionality is determined by arriving at a reasonable estimate of market value and adjusting it by the level of assessment in the Town. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003).); see also Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

In determining market value, the board considers and weighs all of the evidence presented, utilizing its “experience, technical competence and specialized knowledge.” See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it.”) Further, “judgment is the touchstone.” See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. at 68 ; see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

The Taxpayers contend the Mudge Appraisals (in Taxpayer Exhibit No. 1) demonstrate the Property was overassessed in 2010. They also emphasize they purchased the Property in January, 2011 for \$165,000 after it had been on the market for some period of time as further evidence of a disproportional assessment.

The Taxpayers stated they asked their appraiser (Ms. Mudge) to attend the hearing, but she was unable to do so. She therefore was not available to answer questions regarding the assumptions and methodology she used to estimate the market value of the Property. Nor was an explanation given as to why, as noted above, she reached three different market value conclusions for three different effective dates in three separate appraisals.

What is clear is that she relied on the sales comparison approach using a total of five sales (three from the Town and one each from the neighboring towns of Pembroke and Hooksett) to arrive at her market value conclusion of \$198,000 as of the assessment date (April 1, 2010). These sales ranged in price from \$185,000 to \$196,000 (for the three Town sales) and from \$151,000 to \$158,000 (for the two neighboring town sales). This appraiser made what she felt were appropriate adjustments to these sales, but did not mention any unusual conditions of sale.

The Town's assessors noted Ms. Mudge used several "unqualified sales" in her analyses and did not make reference to and/or adjustments for this factor. The board agrees that an appraiser should investigate and disclose any special conditions that might influence a sale price, such as a sale motivated by a divorce or a sale to a related party, and Ms. Mudge did not do in her appraisals. The phrase "unqualified sales," as used by the Town, refers to sales that were not considered appropriate for inclusion in the sales ratio study performed by the DRA for equalization purposes. Such sales may or may not be appropriate for use in a property specific appraisal, depending on whether or not further research can demonstrate the sale is reflective of market value.

The board does note that both Ms. Mudge and the Town's assessors considered and used one sale in the Town (3 Granite Street) as a comparable in their respective analyses. The board finds this sale, (for \$196,000 in November, 2009) just a few months before the assessment date,

is the most reliable indicator of the market value of the Property. 3 Granite Street is on a smaller lot and is smaller in size, but has additional unfinished attic space and is in better condition relative to the Property. The board finds the positive and negative differences which were adjusted for somewhat differently in each analysis are largely offsetting of each other, leading the board to find this sale, reasonably close to the assessment date and within the Town, provides support for a market value conclusion of \$200,000, rounded, for the Property, taking all of the evidence into consideration.

The board has the discretion to evaluate and determine the credibility of a sale price as being indicative of market value. See, e.g., Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); and Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). The board was unable to place undue weight on the purchase price of the Property for \$165,000 in January, 2011, ten months after the assessment date. There is reason to conclude market conditions continued to deteriorate between tax year 2010 and 2011. Among other things, the median ratio calculated by the DRA increased from 100% to 115.5% in this period, which is some evidence of declining market values in the Town.

The Town argued the \$165,000 purchase price paid by the Taxpayers in January, 2011 is not reflective of market value because it was sold by a person (David Montour) who only wanted to “flip” the property and make a quick profit after he had purchased it in foreclosure. In this regard, the price he paid to the bank for the Property just months earlier (in July, 2010) was \$110,000, substantially below the price at which he listed it for sale (\$192,000). (See Municipality Exhibit A.) The Town, therefore, placed no weight on the purchase price and, based on its own analysis in Municipality Exhibit A, contended the market value was \$252,100 as of the assessment date based on other sales, including three located in Concord.

The board, however, is not persuaded the Concord sales used by the Town are truly comparable to the Property for several reasons.<sup>1</sup> The Town concluded the Property had a superior location relative to all of these comparables, explaining it was located on a “cul de sac.” In the board’s experience, the Concord market for two-family properties is likely to be stronger than the market in the Town because of perceived differences, such as access, quality of schools, other municipal services, demand for student housing and the potential for conversion to professional office space. Thus, instead of positive adjustments to the Concord sale prices, the board finds negative location adjustments are indicated for the three Concord sales. Doing so would have brought the adjusted sale prices of these properties down by at least \$12,000 to \$15,000 using the Town’s own metric. In addition, the Town’s grid applied relatively large “gross adjustments” to each of the four comparables (ranging from approximately \$72,000 to \$95,000). This may be some reflection of a relative lack of comparability of these sales to the Property.

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 one’s Tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979). Considering the evidence as a whole, including the Mudge Appraisals and the Town’s analysis, and applying its judgment and experience to this evidence, the board finds the market value of the Property as of April 1, 2010 was \$200,000, rounded, and this represents a reasonable and proportional assessment. The appeal is therefore granted.

If the taxes have been paid, the amount paid on the value in excess of \$200,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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<sup>1</sup> The Town used only one sale from the Town and described a fifth sale in Municipality Exhibit A (79 School Street in Concord, which sold for \$235,000 in July, 2011) but did not include this sale in its comparative sales grid.

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

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Albert F. Shamash, Esq., Member

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Theresa M. Walker, Member

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**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Albert Chaput, Eileen Chaput and Daniel Chaput, 19-21 Sargent Street, Allenstown, NH 03275, Taxpayers; Chairman, Board of Selectmen, Town of Allenstown, 16 School Street, Allenstown, NH 03275; and Corcoran Consulting Associates, Inc., Bayside Village, PO Box 1175, Wolfeboro Falls, NH 03896, Contracted Assessing Firm.

Date: February 4, 2013

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Anne M. Stelmach, Clerk