

**Charles and Vicki Hussman**

**v.**

**Town of Tilton**

**Docket No.: 26060-10PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2010 abated assessment of \$231,800 (land \$46,200; improvements \$185,600) on Map U06/Lot 36, 9 Winter Street, a single-family home on 4.00 acres (the “Property”). (The Taxpayers also own, but are not appealing, Map B17/Lot 19, 77 Winter Street, a 2-story farmhouse assessed at \$159,700 which the parties agreed was proportionally assessed). 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 met their burden of proving disproportionality.

The Taxpayers argued the abated assessment was still excessive because:

- (1) the Property was formerly owned by the mother of one of the Taxpayers and they purchased it in March, 2010 for \$100,000 (with promissory notes payable to other family members);
- (2) the house has many defects and is uninsurable and so no mortgage could be obtained when they purchased the Property (see the fire department and insurance agency letters and cost of repair estimates included in Taxpayer Exhibit No. 1);
- (3) the “Amoskeag Appraisal,” also included in Taxpayer Exhibit No. 1, estimated the market value of the Property to be \$155,000 as of October 23, 2009;
- (4) as shown in the photographs in Taxpayer Exhibit No. 2 and the slides presented at the hearing, the house has many defects and items in need of repair, including the deteriorated roof, antiquated electrical service that needs updating and rewiring, “leaching” through the walls, mold in the kitchen, structural separation of the front steps from the house, lack of insulation and asbestos;
- (5) the layout of the lot (with a narrow section in the middle) diminishes the utility of the land; and
- (6) the assessment should be abated further to \$155,000 (adjusted by the level of assessment).

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

- (1) the Town abated the assessment by \$9,100 (from \$240,900) in January, 2013 by reducing the condition factor of the excess land from “100” to “50” (see Municipality Exhibit B);
- (2) the Amoskeag Appraisal is not relevant because it valued the Property as a three-family residence and was based on sales from other towns, but the Property changed its highest and best use to a single-family house after the Taxpayers acquired it and before the April 1, 2010 assessment date;

- (3) 170 Winter Street is an almost identical home which sold in April, 2010 for \$262,500 and the Town's sales analysis (Municipality Exhibit A) includes this sale and supports the proportionality of the assessment;
- (4) in that sales analysis, the Town made adjustments for the "fair" condition of the house and the roof repairs that will be needed and still found the Property had an indicated value in a range supportive of the assessment as abated; and
- (5) the appeal should be denied.

The parties agreed the level of assessment in the Town was 97.3%, the median ratio calculated by the department of revenue administration. During the hearing, the board requested the Town provide information to the board, copying the Taxpayers, explaining what the assessment would be if the house was classified as being in "poor" rather than "fair" condition. On January 18, 2013 the Town submitted a letter indicating the change in classification would result in an additional 11% depreciation (\$31,800) to the assessed building value "and the total assessment would be reduced to \$200,000."

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$200,000 for tax year 2010. The appeal is therefore granted.

To determine whether a tax abatement is warranted, 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").

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).

Weighing the evidence as a whole and using its judgment and experience, the board finds it can place little weight on the Amoskeag Appraisal (estimating a \$155,000 market value) because that appraisal considered the Property to be a "Three-Family" residence at its highest and best use. The evidence presented indicates the Property probably has a higher value as a single-family residence. In addition, the Amoskeag Appraisal relied on only three sales, none of which were in the Town and one of which (in Enfield) was over 30 miles distant, reducing their comparability.

In contrast, the Town's sales analysis includes five single-family sales in the Town. The board finds the Town's sales are more comparable to the Property in its highest and best use. This analysis makes reasonable adjustments to these five sales for differences with the Property, except for assuming the Property was in "fair" condition.

The Taxpayers' testimony, photographs and other evidence, however, establish the house was still in need of such extensive repairs (summarized above) that both its inhabitability and insurability were in serious question. These factors would lower the price a knowledgeable buyer would pay in an arm's-length transaction as of the April 1, 2010 assessment date. Therefore, the board finds a condition rating of "poor" rather than "fair" was warranted, resulting in an additional 11 percent depreciation (\$31,800) to the assessed building value and an abated assessment of \$200,000.

For these reasons, the appeal is 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.

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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Michele E. LeBrun, Chair

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Albert F. Shamash, Esq., Member

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**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Charles and Vicki Hussman, 77 Winter Street, Tilton, NH 03276, Taxpayers; Chairman, Board of Selectmen, Town of Tilton, 257 Main Street, Tilton, NH 03276; and Loren Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: February 13, 2013

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Anne M. Stelmach, Clerk