

**Roland and Noella Beausejour**

**v.**

**Town of Gorham**

**Docket No.: 19460-02PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2002 assessment of \$139,900 (land \$14,800; buildings \$125,100) on a 15,790-square foot lot with a three-family home (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 Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

- (1) an analysis of five other assessments (Taxpayer Exhibit 1), comparing building assessments to living areas, reflects a much lower market value (\$113,000) for the Property;
- (2) three or four unit houses are valued lower than single-family houses in the Town;

- (3) a decline in employment in the paper mill industry has affected the value of multi-family houses and limited the rents that can be generated and this is reflected by high vacancy rates;
- (4) the Property's two second-floor apartments rented for \$400 and \$425 in 2002, with the Taxpayers paying for the heat, water and sewer, and the tenants paying for electricity;
- (5) the Town's analysis (Municipality Exhibit A) focused on "effective area" rather than "living area" which overvalues the Property because the extra features measured in the effective area calculation, such as the porch and attic areas, do not add as much value as additional living area would and the Property has a lower proportion of living area to effective area than the comparables used by the Town; and
- (6) the Property's April 1, 2004 market value would be in the range of \$110,000 to \$120,000, in line with the \$113,000 estimated value in Taxpayer Exhibit 1.

The Town argued the assessment was proper because:

- (1) the Taxpayers made no effort to adjust for condition or age in their Exhibit 1;
- (2) the mill in the Town shut down in 2001, but some rebound in employment activity occurred around February 2002;
- (3) the Town did a revaluation in 2002 and the general level of assessment for that year was 100%;
- (4) the Property is an older home but is very well maintained, with a home office in the rear of the house; and
- (5) the Taxpayers did not carry their burden of proof.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$118,000.

The basis for assessing property is market value. See RSA 75:1. After a thorough review of the evidence and testimony, the board finds the best evidence of the Property's market value to be the market analysis provided by the Town in Municipality Exhibit A, with some adjustments. The Town used the sale of five comparable properties in an adjustment grid to estimate the Property's market value. The board finds, however, the market analysis grid should have contained an adjustment for the differences in living area between the Property and the comparable sales. The Town at the hearing concurred that including a living area size adjustment would have made the grid more accurate. The board finds a \$25 per square foot of living area adjustment will properly recognize any contributory value for the difference between the living areas of the Property and the comparable sales. Making this adjustment on the Town's grid to the five comparable sales yields new indicated market values as follows:

Comparable Sale #1	\$153,150
Comparable Sale #2	\$120,700
Comparable Sale #3	\$107,900
Comparable Sale #4	\$123,350
Comparable Sale #5	\$117,925

The board has placed the most weight on Comparable Sales #2 and #5 as they are multi-unit properties similar to the Property. The board placed little weight on Comparable Sales #1 and #3 because they are single-family dwellings compared to the Property which contains three living units. During the hearing, testimony was given that Comparable Sale #4 included a right to a life tenancy for the seller. The details of the life tenancy were not provided and the board finds Comparable Sale #4 has sufficient unanswered questions concerning the life tenancy and any effect it may have on this sale's market value. The Town made no adjustment on its market analysis grid for this factor. For this reason, the board did not give much weight to the market value indication determined using Comparable Sale #4.

Using Comparable Sales #2 and #5, with more weight being given to Comparable Sale #5 based on the relative magnitude of adjustments to each sale, the board finds the indicated market value based on the Town's market analysis grid should be \$118,000. This estimate is within the range of market values estimated by the Taxpayers. The parties concurred the general level of assessment for the Town for tax year 2002 was 100%; therefore, the indicated market value also becomes the indicated appropriate assessment and the board finds this value should be placed on the Property.

The board must make decisions based on the evidence and testimony presented before it.<sup>1</sup> In this case, the board has used the Town's market analysis grid with some adjustment; however, the parties should note a market analysis grid based upon the selling prices of comparable properties that are then adjusted by assessment factors determined during a mass appraisal process is potentially unreliable. Assessment adjustment factors may not always be determined in the same fashion as a market adjustment in a typical property-specific residential fee appraisal. Assessments that are determined using a mass appraisal format, such as the Property's assessment determined during the Town's 2002 municipal-wide revaluation, are intended to be used to equitably spread the tax burden among all properties within the Town. However, in this appeal the board finds the Town's analysis to be the best evidence presented and, with the adjustments previously discussed, to be the best indicator of the Property's market value.

The Taxpayers submitted an analysis using five multi-unit properties and their building assessments (Taxpayer Exhibit #1). The Taxpayers determined a value per square foot for the living area of each of the comparable sales based on their building assessments alone. The board

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<sup>1</sup> This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. Portsmouth, 115 N.H. 63, 68 (1975), see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

finds that while this analysis provides an indication of the assessed value per square foot, it does not adjust for any unique individual characteristics of the sale properties. For this reason, the board gave the Taxpayers' exhibit little weight in determining what the Property's appropriate assessment should be.

If the taxes have been paid, the amount paid on the value in excess of \$118,000 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.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed 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(f). 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Roland and Noella Beausejour, 44 Main Street, Gorham, New Hampshire 03581, Taxpayers; and Town of Gorham, Chairman, Board of Selectmen, 20 Park Street, Gorham, New Hampshire 03581.

Date: September 29, 2004

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Anne M. Stelmach, Deputy Clerk

**Roland and Noella Beausejour**

**v.**

**Town of Gorham**

**Docket No.: 19460-02PT**

**ORDER**

The board has reviewed the “Town’s” October 14, 2004 motion for reconsideration (the “Motion”) with respect to the “Decision” dated September 29, 2004 granting the “Taxpayers” an abatement for tax year 2002.

The board finds no proper basis for granting a rehearing under the standards articulated in RSA 541:3 and TAX 201.37. While the Town may disagree with the board’s findings based upon the evidence presented, such disagreement does not justify “another hearing” nor constitute “good reason” for granting the Motion.

Any appeal of the Decision must be by petition to the supreme court filed within 30 days of this order. See RSA 541:6.

**SO ORDERED.**

BOARD OF TAX AND LAND APPEALS

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Roland and Noella Beausejour, 44 Main Street, Gorham New Hampshire 03581, Taxpayers; and Chairman, Board of Selectmen, Town of Gorham, 20 Park Street, Gorham New Hampshire 03581.

Date: November 2, 2004

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Anne M. Stelmach, Deputy Clerk