

Maurice and Joan Tanguay

v.

Town of Gorham

Docket No.: 19756-02PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2002 assessment of \$102,000 (land \$11,300; buildings \$90,700) on a 9,240-square foot lot with a single-family home (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. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the Property has no backyard, a garage with a flat roof which requires snow removal in the winter, only a small (6' x 20') utility shed and a pool that is overvalued;

- (2) a dilapidated house in need of repairs across the street is an “eyesore” and has remained so for about seven years, diminishing the Property’s market value;
- (3) the Town corrected some errors on the assessment-record card, including changing the number of bedrooms to three rather than four, the total room count from ten to eight, and the one-half bathroom in the garage to seasonal use;
- (4) comparisons with some other properties on the same street (Jewell) and another street (Church) indicate the Property is overassessed; and
- (5) as of the April 1, 2002 assessment date the Property was worth approximately \$90,000, which is below the Town’s assessment.

The Town argued the assessment was proper because:

- (1) a town-wide revaluation was performed in 2002 and the general level of assessment was 100%;
- (2) the Town granted an abatement at the municipal level based on some of the factors mentioned by the Taxpayers including the garage’s flat roof, the total number of rooms and bedrooms, the seasonal, one-half bathroom located in the garage and the fact the house across the street needs repair;
- (3) in granting an abatement, the Town increased the various depreciation factors for the previous reasons and because one bedroom was accessed through another bedroom;
- (4) an analysis of market sales (Municipality Exhibit 1) indicates the Property was fairly assessed; and
- (5) the Taxpayers failed to carry their burden of proof.

Board’s Rulings

The board finds the Taxpayers did not prove the Property was disproportionately assessed.

In a tax abatement case, the taxpayer has the burden of proving by a preponderance of the evidence, the property at issue was assessed disproportionately to other properties in the town. Appeal of Sokolow, 137 N.H. 642, 643 (1993). The basis for assessing property is market value. See RSA 75:1. The Taxpayers did not present any evidence of the Property's market value. To carry their burden, the Taxpayers should have made a showing of the Property's market value. This value would then have been compared to the Property's assessment and the general level of assessment in the Town. See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

The Taxpayers testified there were some inconsistencies between the Town's assessment methodology used in the determination of the assessments of the Property and certain other properties. The board finds these assessment comparisons to be insufficient evidence to carry the Taxpayers' burden. See Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (2003) (evidence of "flawed" methodology insufficient unless there is proof of disproportional assessment). The board would have to assume the assessments on the other properties presented by the Taxpayers were all accurate and correct and that the other properties were not underassessed. The board did not receive sufficient evidence and testimony to make that determination. The other properties the Taxpayers used as support for the Property being overassessed may or may not be underassessed. The underassessment of other properties does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of the underassessment of other properties would be analogous to a weights and measures inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in

town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper yardstick to determine proportionality, not just comparison to a few other similar properties. Id.

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 four 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. At the hearing, the Town 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 four comparable sales yields new indicated market values as follows:

Comparable Sale #1	\$114,500
Comparable Sale #2	\$ 84,450
Comparable Sale #3	\$ 87,625
Comparable Sale #4	\$113,950

The board placed more weight on the market value indications provided by Comparable Sales #1, 2, and 4 as they are most similar to the Property being single-family home sales while Comparable Sale #3 is the sale of a multi-family property. Giving equal weight to each of the single-family home sales yields an indicated value slightly above the Town's assessment. The board would note, however, the Town's use of comparable sales adjusted by assessment factors to determine an indicated value for the Property is suspect in that some of the adjustment factors were determined during the town-wide revaluation using a mass appraisal methodology which

may not fully account for the individual characteristics of certain properties. Adjustments on a market analysis grid using comparable sales should be market adjustments specific to the individual properties rather than mass appraisal adjustments.

Given the totality of the evidence and testimony, no further abatement than that already determined during the abatement request review at the municipal level is warranted.

For all these reasons, the appeal is denied.

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

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: Maurice and Joan Tanguay, 17 Jewell Street, Gorham, New Hampshire 03581 Taxpayers; and Town of Gorham, Chairman, Board of Selectmen, 20 Park Street, Gorham, New Hampshire 03581.

Date: September 28, 2004

Anne M. Stelmach, Deputy Clerk