

Mark and Linda Madsen

v.

Town of New Boston

Docket No.: 23436-07PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” tax year 2007 assessment of \$353,800 (land \$124,000; building \$229,800) on Map 011/Lot 092, a single family home on 2.160 acres at 54 Summit Drive (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) an appraisal prepared by Mark Correnti (the “Correnti Appraisal,” Taxpayer Exhibit No. 1) estimates the market value of the Property as of the assessment date to be \$335,000;

(2) the Town neglected to take into account seller concessions in several of the six comparables utilized by the Town in its direct sales comparison approach (Attachment F to Municipality

Exhibit D, the “Defense of Assessed Value Report”); and

(3) the Town’s land assessment of \$124,000 is excessive based upon the site value estimate contained in the Correnti Appraisal which was based on the sale of three lots in

New Boston.

The Town argued the assessment was proper because:

(1) the Town did a statistical update in tax year 2006, including a complete field review;

(2) the Property had an estimated market value of \$355,100 based on the sales comparison approach contained in Municipality Exhibit D, Attachment F;

(3) adjusting the analysis for the sellers’ concessions as testified to by the Taxpayers does not materially change the market value estimate;

(4) the three lot sales contained in the Correnti Appraisal to estimate site value were unadjusted for differences and, once adjusted for location, topography, size and date of sale, the indicated site value supports the Town’s assessed value for the site; and

(5) utilizing the Correnti Appraisal’s estimate of market value of \$335,000 and equalizing it by the 2007 median ratio of 103% arrives at an indicated assessed value of \$345,050, only 2.54% less than the actual assessed value.

The parties stipulated the level of assessment was 103% in tax year 2007, the median ratio computed by the department of revenue administration.

Board’s Rulings

The foundation for taxation in New Hampshire is found in Part I, Article 12 and Part II, Article 5 of the New Hampshire Constitution that require every member of society contribute her

or his share in support of government and that taxes levied to do so must be “proportional and reasonable.” Further, RSA 75:1 establishes the basis for achieving proportional assessment is market value. Consequently, for taxpayers to carry their burden, they must present market value evidence to support their claim of disproportionate assessment.

All assessments are based on “estimates” of a property’s market value. As the Town noted (in Municipality Exhibit C, p. 2), there is never one exact or precise assessment, but rather 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). Further, “[t]he demand of constitutional equality in taxation anticipates some practical inequalities.” City of Berlin v. County of Coos, 146 N.H. 90, 94, 767 A.2d 441, 444 (2001). “Absolute mathematical equality is not obtainable in all respects if taxation is to be administered in a practical way.” Id. (quotation omitted); see also Sirrell v. State, 146 N.H. 364, 370 (2001). In this appeal, the board finds the assessment under appeal (\$353,800 for tax year 2007) is proportionate to the market value “estimates” presented by both the Taxpayers (the Correnti Appraisal) and the Town (the direct sales comparison approach performed by the Town’s assessor contained in Municipality Exhibit D, Attachment F).

The Property’s equalized assessment was \$343,500 ($\$353,800 \div$ the 103% equalization ratio) which is the indication of market value relied upon by the Town and challenged by the Taxpayers in this appeal. While the Taxpayers contend the market value of the Property was \$335,000 as of the assessment date, based solely on the Correnti Appraisal, this is simply one estimate and is only about 2.5% less than the Town’s indication of value.

By definition an “estimate” is not an absolute determination but rather one that involves opinion and a substantial amount of judgment. Further, sale prices, the raw data used in

developing estimates of market value and which stand as proxies for market value, are transactions between individuals with varying motivations for transferring and owning property and different amounts of knowledge regarding the market. Thus, any estimate of market value based on sales data involves varying amounts of subjectivity and cannot be viewed as an absolute and precise indicator of value.¹

The board could also note the considerable, persuasive evidence and analysis presented by the Town at the hearing, including Municipality Exhibits C and D. However, the board need not get into the extensive analysis and critiquing of the Correnti Appraisal contained in those exhibits because, even accepting the Correnti Appraisal value conclusion of \$335,000 at face value, it is an “estimate” that generally supports the assessed value on appeal.

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(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.

¹ The subjectivity and uncertainty inherent in pinning down market value is further reflected in this appeal, where the Taxpayers initially believed (and stated in their appeal document) that the Property had a market value of \$290,000, \$45,000 less than the estimate in the Correnti Appraisal.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mark and Linda Madsen, 54 Summit Drive, New Boston, NH 03070, Taxpayers; Chairman, Board of Selectmen, Town of New Boston, PO Box 250, New Boston, NH 03070; and George Hildum, 2 Sanborn Road, Concord, NH 03301, Contracted Assessing Firm.

Date: June 29, 2009

Melanie J. Ekstrom, Deputy Clerk