

**Lizabeth and Ronald Karvosky, Sr.**

**v.**

**Town of Marlborough**

**Docket Nos.: 22612-06PT/23442-07PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2006 and 2007 assessments of \$412,780 (land \$118,850; building \$293,930) on Map 07/Lot 005-2, a single family home on 20.20 acres (the “Property”). For the reasons stated below, the appeals for abatement are denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were 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 assessments were higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessments were excessive because:

- (1) they purchased the Property for \$400,000 in September 2006;
- (2) the Property was publicly listed for sale through a real estate broker for more than a year;

- (3) the previous owners had accepted a prior offer to sell the Property for the same amount (\$400,000) but the transaction “fell through”;
- (4) the “HUD” statement shows the sales commission to the realtor is based on a sale price of \$400,000; and
- (5) the assessments should be \$381,250 based on the selling price and an adjustment for the land that is in current use.

The Town argued the assessments were proper because:

- (1) the previous owners may have been under some duress to sell the Property due to health problems and their age and, therefore, the Taxpayers’ purchase of the Property may not have been an arm’s-length transaction; and
- (2) the Taxpayers’ appraisal (Taxpayer Exhibit No. 2) supports the assessments.

### **Board’s Rulings**

The board finds the Taxpayers failed to prove the Property was disproportionately assessed.

The Taxpayers based their argument primarily on the fact they acquired the Property in September 2006 for an effective purchase price of \$400,000. They submitted a letter from the realtor who represented them in the purchase of the Property (Taxpayer Exhibit No. 1) which outlined the sequence of events during the Property’s transfer. The Taxpayers contend that although they listed the contract sale price at \$424,900 on the “HUD” statement they effectively paid \$400,000 and the higher listing price on the agreement was simply there to allow them to

obtain some additional funds through financing from their lending agent at the time of the mortgage agreement and transfer of the Property.

The board finds the selling price in this case, while some evidence of the Property's market value, to be inconclusive. There was testimony the sellers had originally agreed to sell the Property for \$400,000 to a previous potential purchaser but that the sale "fell through" for unexplained reasons. The Taxpayers testified this was an indication the Town's assessed value was too high based on the eventual selling price. The board has the discretion to evaluate and determine the credibility of the sale price being indicative of market value. See Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). Where it is demonstrated the sale was an arm's-length transaction the sale price is one of the "best indicators of the Property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). During the hearing, however, the board received testimony that the sellers of the Property were advancing in age and at least one of them had some health problems. This may have caused them to be under some duress and possibly led them to sell at a price below the Property's market value. These circumstances raise the question of whether the Property's transfer was a truly arm's-length transaction.

In further support of their position, the Taxpayers submitted an appraisal performed for their lending institution by Model Appraisal Services which estimated the market value of the Property on August 15, 2006 to be \$416,000. The board finds the appraisal may understate the Property's market value for the following reasons. First, the appraiser, who did not attend the hearing and therefore was unavailable to answer questions regarding the bases for his methodology or adjustments, appears to understate the contributory value of the site and its attendant views based on the June 2004 sale of a nearby lot (map/lot 07-005-1) for \$80,000. The

Town offered un rebutted testimony at hearing that this sale property had a less desirable location because it did not have the views enjoyed by the Property. For these reasons, the Town argued the appraiser's use of this property's selling price as the land value component in the cost approach and as a basis to adjust the land values of the comparable sales in the sales comparison approach of the appraisal leads to an understated value for the Property by either approach.

Second, the board notes the Town's observation that the \$500 per acre adjustment employed by the appraiser for differences between lot sizes understates the contributory value of any "excess" land. The Town testified it adjusted for the presence of excess land at \$3,000 per acre in its assessment tables. Based on the board's experience, we find the Town's adjustment to be more representative of the contributory value of any excess land. Further, the Town testified it used a \$500 per acre adjustment for land that was considered "waste"; that is, land of little or no utility.

The board finds the Taxpayers' argument that the excess land is unbuildable because it does not have any separate deeded legal access and may have some steep topography is unpersuasive.

The Town is not contending the excess land area could be sold separately for \$3,000 per acre but rather the excess land contributes \$3,000 per acre to the total value of the Property. If the Taxpayers' appraisal is adjusted using the Town's value for excess land differences, the indicated market value of the Property, based on each of the comparable sales, goes up and would further support the Town's assessed value and indicate no abatement is warranted.

Given the questions surrounding the arm's-length nature of the Taxpayers' purchase of the Property, the accuracy of the appraisal and the way the HUD statement was filled out, the board finds the Taxpayers have not provided conclusive evidence the Property's assessments are disproportionate to its market value.

The board further notes the Taxpayers' appraised value, even with some minor adjustment for the excess land, and the Town's assessments are only a few percentage points apart. Determining assessments is not an exact science but is a matter of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Further, for a Town the size of Marlborough, the Assessing Standards Board ("ASB") guidelines show a coefficient of dispersion ("COD") 20% above or below market value is within an acceptable range. The COD for the Town for tax year 2006 was 5.3, well within the guidelines outlined by the ASB. The appealed assessments are well within acceptable assessing variability from the market value evidence submitted.

For all these reasons the board finds the Taxpayers failed to carry their burden of proof to show the Property was disproportionately assessed and the appeals are 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(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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Paul B. Franklin, Chairman

---

Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Lizabeth and Ronald Karvosky, Sr., PO Box 235, Marlborough, NH 03455, Taxpayers; Chairman, Board of Selectmen, Town of Marlborough, PO Box 487, Marlborough, NH 03455; and Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Contracted Assessing Firm.

Date: March 16, 2009

---

Anne M. Stelmach, Clerk