

**Theodore A. Miller and Nancy D. Miller**

**v.**

**Town of Gorham**

**Docket No.: 23610-07PT**

**DECISION**

The “Taxpayers”<sup>1</sup> appeal, pursuant to RSA 76:16-a, the “Town’s” 2007 assessment of \$135,300 (land \$24,900; building \$110,400) on Map U-8/Lot 35, 387 Main Street, a single family home on a 9,378 square foot lot (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.

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<sup>1</sup> This appeal was filed in the name of one of the Taxpayers. At the hearing, however, the parties agreed the Property is owned jointly by Theodore A. and Nancy D. Miller and the board has changed the caption of this appeal accordingly.

The Taxpayers argued the assessment was excessive because:

- (1) as stated in the presentation (Taxpayer Exhibit No. 1), the Property is on Main Street and is 80 feet from the intersection of Route 2 and Route 16, a heavily trafficked area, as shown in the photographs and map submitted (see Taxpayer Exhibit Nos. 3 and 4);
- (2) the real estate market has declined since the second quarter of 2006;
- (3) an appraisal presented by Robert J. Goddard, Goddard & Associates Appraisers (the “Goddard Appraisal,” Taxpayer Exhibit No. 2) estimated the market value of the Property to be \$115,000 as of the assessment date;
- (4) an analysis of ten properties comparable in value to the Property indicates a “mean [assessed] value” of \$114,790 and other comparisons also show the Property is overassessed;
- (5) the assessment-record card reflects a number of discrepancies, overstating the size of the first floor and the below grade and deck areas of the Property and understating the amount of depreciation;
- (6) the Town’s analysis contains properties sold in 2007 that are not comparable, with prices ranging from \$85,000 to \$219,000 before the Town’s adjustments, and there are inconsistencies between the assessed values and sale prices of these properties;
- (7) contrary to the Town’s argument, an “estate sale” property does not necessarily sell for a “bargain price”; and
- (8) if the assessed value is compared to 386 Main Street, the one “most similar” and “most comparable” to the Property, the assessment should be abated to \$82,500.

The Town argued the assessment was proper because:

- (1) the Town performed a revaluation in tax year 2007;
- (2) the Property was granted an abatement (from \$138,900 to \$135,300) by the Town;

(3) the Town's assessor measured the exterior sides of each building and followed a consistent practice;

(4) the Property is in a commercial area and is assessed in a "Neighborhood 3" zone, but the Taxpayers applied to have the Property valued as a residential property (like those behind Main Street, in a "Neighborhood 4" zone);

(5) the Taxpayers' analysis compares the Property to other properties that are smaller in size and its adjusted based rate per square foot is comparable (in the middle of the range) and the comparables in the Goddard Appraisal are not truly comparable based on style, number of stories and other attributes; and

(6) from the Town's own analyses (see Municipality Exhibits A, B and C), the Town concludes the Property is not disproportionately assessed.

At the hearing, the parties agreed the level of assessment in the Town in tax year 2007 was 100.6%, the median ratio calculated by the department of revenue administration.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$120,500. The appeal is therefore granted for the reasons discussed below.

The Property is a residence located in a commercial zone. RSA 75:11, I allows "[t]he owner of record of any residence located in an industrial or commercial zone [to] apply on or before April 15 of each year to the selectmen or assessors, on a form prepared by the selectmen or assessors, for a special appraisal of the residence for that year, based upon its value at its current use as a residence." Further, paragraph VI of this statute states "[t]he selectmen or assessors shall make such a special appraisal of any eligible residence whose owner correctly applies in accordance with paragraph I, and shall assess the tax for that year on that special

appraisal.” There is no dispute the Taxpayers timely applied to have the Property appraised as a residence and thus the issue before the board is a determination of the proportionality of the assessed value based on its market value as a residential property.

The board considered the Goddard Appraisal, as well as the other evidence presented by the Taxpayers. Mr. Goddard was not present at the hearing and the board has given the appraisal the weight it deserves, acknowledging the lack of opportunity for cross examination by the Town or questions of the board. The board does note, however, that Mr. Goddard presented significant detail to support his final estimate of value, including notations that he had inspected the Property and performed both interior and exterior inspections of all of the comparable sales utilized, as well as researching the sales through the registry of deeds and speaking with either the grantor or the grantee of each sale to confirm the relevant facts.

The Goddard Appraisal estimated a \$115,000 market value of the Property based on six comparable sales. The Town noted two of these six sales (15 Potter Street and 14 Madison Avenue) were “estate” sales and should not be considered. However, one of the sales, (15 Potter Street), was also used by the Town in its own analysis (the “Analysis”) of 11 sales of Neighborhood 3 and Neighborhood 4 properties which sold in 2007 (Municipality Exhibit A). The Town also used a “forced before foreclosure” sale (364 Main Street). The Town had no knowledge if any of these sales had been exposed to the market. The Taxpayers presented evidence indicating 15 Potter Street had been listed on the open market for \$127,500 on July 17, 2007 and sold for \$120,000 on October 3, 2007 (Taxpayer Exhibit No. 6). Given this evidence, the board finds the Town’s \$20,000 (20%) adjustment for “estate sale” is excessive. The board therefore gives more weight to the Goddard Appraisal’s adjustments.

In addition to the Goddard Appraisal, the Taxpayers presented other evidence to support their argument that the Property was overassessed. First, the Property's location very near the intersection of NH Route 16 and US Route 2 in an area with overhead traffic lights creates a back-up of traffic directly in front of the Property affecting ingress and egress, coupled with the noise of tractor trailer units applying their "jake brakes" when descending the downhill slope to the traffic lights. (See also Taxpayer Exhibit No. 3, photos 1, 2 and 3.) The Property's southerly (rear) boundary has an active railroad line with trains passing at least twice a day. The Property abuts a convenience store/gas station to the east and a three-family structure to the west. A review of the Goddard Appraisal supports the evidence presented by the Taxpayers. These facts were also addressed by Mr. Goddard in arriving at his market value estimate.

Second, the Taxpayers conducted an analysis of ten single family homes located on Main Street (US Route 16) and determined a mean assessed value of \$114,790, supporting the Goddard Appraisal value. The Taxpayers further analyzed the assessed value per square foot of dwelling and assessed value per square foot of lot area of the ten "comparables." This analysis resulted in five newer and/or larger dwellings with a higher assessment per square foot and only one "comparable" with a higher per square foot value than the Property. While this analysis, on its face, questions the assessment of the Property in relation to other properties along Main Street, the board is unable to give it much weight as there are unknown variables that must be reviewed and adjusted for to determine the comparability of the properties. Averaging building/property values, as done by the Taxpayers, does not necessarily prove disproportionality; it only proves the Taxpayers' land/building/property is assessed more than the average property in their limited sample.

Third, the Taxpayers argued there were discrepancies between the Property's physical characteristics and the Town's measurements. As stated by the Town, however, it is common practice in mass appraisals for properties to be measured externally and all measurements are "gross." It is also not atypical for appraisers to measure interior space. As the Town's measurements are consistently applied to all properties in the municipality, it would be inappropriate for the board, without proof that the external measurements are incorrect, to adjust the Property's measurements calculated by the Town. It is also unlikely such discrepancies would be material.

In addition, the Town's use of a consistent methodology is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982). The board finds the Taxpayers did not show the measurement discrepancies they noted resulted in disproportionality. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant." Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985), quoting Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205 (1899).

Last, the Taxpayers argued from the ten comparables analyzed, the "most similar" to the Property is located across the street at 386 Main Street. (See Taxpayer Exhibit No. 3, photos 4 and 5) based on location, amenities, lot size and style, the value of the Property should be reduced to \$82,500 based on a comparison to 386 Main Street alone. The Town disagreed and stated 386 Main Street is a "bungalow" style home (versus the Property's ranch style), is 40% smaller than the Property and is not comparable. The board concurs with the Town that a review of the 386 Main Street assessment-record card supports the differences in the properties' types and sizes and is not a credible reason to adjust the assessment to the Property.

The board noted during the hearing that one of the comparable sales (which sold in September 2007 for \$130,000 and was assessed at \$149,600) utilized by the Town in its Analysis, 364 Main Street, identified as Map 8, Lot I20, located southeast of the Property just southerly of the US Route 16 and US Route 2 intersection, while larger in land and building size, was assessed a land value of \$1.49 per square foot versus the subject's \$2.66 per square foot, which supports the Taxpayers' contention the land is overassessed. While the Town indicated this sale was "forced before foreclosure," its \$65,000 adjustment in the Analysis would indicate either the property is underassessed or its adjustment in the Analysis is excessive.

During the course of the hearing, the board had the Town denote on Municipality Exhibit C (a composite map of Gorham, NH) the neighborhood areas surrounding the Property. The Town testified the highest and best use of the Property was as commercial but the Property was valued as residential. The Town indicated the Neighborhood 4 code was utilized based on sales of residential properties on Main Street. Upon questioning, the Town indicated some of the sale properties along Main Street were purchased for commercial use and others for residential use. The board finds the Property should be classified in the Neighborhood 3 code in accordance with RSA 75:11 allowing "for a special appraisal ... based upon its value at its current use as a residence" and its location with the railway line and industrial and residential properties behind the Property. The board has applied a unit price of \$1.75 per square foot based on the Town's testimony that a Neighborhood 3 code equates to \$35,000 per acre or \$1.75 per square foot. This reduction results in a land value of \$16,411.50 which, when combined with the building value, equates to a total value of \$126,811.50. The board has further determined an additional 5% external obsolescence adjustment should be applied to reflect the heavy traffic count at the intersection which affects ingress and egress of the Property, the truck noise issues and the

active rail line behind the Property. This adjustment equates to a total assessment of \$120,500, rounded.

Therefore, based on all of the evidence presented and analyzed above, the board concludes the proper assessment to be \$120,500.

If the taxes have been paid, the amount paid on the value in excess of \$120,500 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(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, 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: Theodore A. Miller and Nancy D. Miller, 387 Main Street, Gorham, NH 03581, Taxpayers; Chairman, Board of Selectmen, Town of Gorham, 20 Park Street, Gorham, NH 03581; and George E. Sansoucy, PE, LLC, 89 Reed Road, Lancaster, NH 03584, Contracted Assessing Firm.

Date: May 13, 2010

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Anne M. Stelmach, Clerk