

Mark S. and Susan M. Bleau

v.

Town of Swanzey

Docket No.: 24881-09PT

DECISION

The “Taxpayers” appeal the “Town’s” 2009 assessment of \$396,500 (land \$78,900; building \$317,600) on Map 29/Lot 4/1, 272 Swanzey Lake Road, a single family home on 9.20 acres (the “Property”). 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. To establish disproportionality, the Taxpayers must show the Property’s assessment was higher than the general level of assessment in the municipality. See RSA 76:16-a; Tax 201.27(f); Tax 203.09(a); and, e.g., Appeal of City of Nashua, 138 N.H. 261, 265 (1994). For the reasons stated below, the board finds the Taxpayers did not meet their burden and therefore the appeal for abatement is denied.

The Taxpayers argued the assessment was excessive because:

- (1) two appraisals prepared for financing purposes in 2009 indicate the market value of the Property was below the assessed value;
- (2) the appraisals indicate market value estimates for the Property of \$387,000 (as of March 2009) and \$375,000 (as of July 2009);

(3) the Property should be assessed for \$355,000 based on the assessments of other similar properties; and

(4) an abatement should be granted.

The Town argued the assessment was proper because:

(1) the Town performed a revaluation in tax year 2009;

(2) the two appraisals submitted by the Taxpayers, even if accepted at face value and despite the deficiencies noted by the Town, actually support the assessment because they reach market value conclusions of \$387,000 and \$375,000 (within five percent of the assessed value);

(3) the Town obtained an independent appraisal from J. Michael Tarello (the "Tarello Appraisal," Municipality Exhibit A; see also Municipality Exhibit B) which estimates the market value of the Property as of the assessment date was \$397,000; and

(4) the Taxpayers failed to meet their burden of proof.

Board's Rulings

The board finds the Taxpayers failed to meet their burden of proving disproportionality. The appeal is therefore denied for the reasons stated below.

As noted above, the Taxpayer presented two professionally prepared appraisal reports and the Town submitted the Tarello Appraisal. The three independently retained appraisers estimated the market value of the Property at \$387,000, \$375,000 and \$397,000, respectively. The three market value opinions are in close proximity to one another, and differ only 5.5% from high to low. In addition, the three market value opinions were estimated in March, April and July 2009, all of which are in close proximity to the April 1, 2009 assessment date. The board finds that the three appraisals are generally reliable evidence of market value and are supportive of the assessed value of \$396,400.

In New Hampshire, the legal basis for a proportional assessment is market value adjusted by the level of assessment in a municipality. See RSA 75:1; and Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). The market value evidence in the form of the Taxpayers' two appraisals and the Tarello Appraisal supports the conclusion the Property was not disproportionately assessed in relation to the level of assessment in the Town.¹ See also Appeal of Andrews, 136 N.H. 61, 64 (1992); Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985). There is never one exact, precise or perfect assessment; rather, there is 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).

The board could place no weight on the Taxpayer's opinion the Property has a market value of \$355,000 based on comparable assessments. When asked how the opinion was arrived at, the Taxpayer indicated that \$355,000 was "kind of in the middle" of the range indicated by the assessments they reviewed. Finding the middle of a range of selected assessments does not prove disproportionality. Proportional assessments are not averages; rather they are the correlation of general sales data to the unique characteristics of each property. In addition, even if the Taxpayers are correct in their comparisons, this could mean those properties are under assessed and the underassessment of other properties does not prove the over assessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987).

In summary, the board finds the best evidence of market value are the three appraisals submitted, two by the Taxpayer and the Tarello Appraisal. Considered as a whole, the three

¹ The parties were unable to stipulate to whether the level of assessment in the Town should be measured using the median ration (97.3%) or the weighted mean (100%), as calculated by the department of revenue administration. The board finds, however, these indications are so close as to make no material difference to the outcome of this appeal.

appraisals support the conclusion the Property was not disproportionately assessed in tax year 2009. Therefore, the board finds the Taxpayers did not meet their burden of proving the Property was disproportionately assessed and therefore the appeal for abatement is denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) 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

Albert F. Shamash, Esq., Member

Theresa M. Walker, Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mark S. and Susan M. Bleau, 272 Swanzey Lake Road, Swanzey, NH 03446, Taxpayers; Chairman, Board of Selectmen, Town of Swanzey, PO Box 10009, Swanzey, NH 03446; and Vision Government Solutions, Attn: Mike Tarello, 44 Barefoot Road, 2nd Floor, Northborough, MA 01532, Contracted Assessing Firm.

Date: 3/12/12

Anne M. Stelmach, Clerk