

**David P. Fedelski**

**v.**

**Town of Langdon**

**Docket No.: 24991-09PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2009 assessment of \$146,400 (land \$86,500; building \$59,900) on Map 1/Lot 7604.0 a single-family residence on 5.25 acres (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer requested and was granted leave to not attend the hearing. Tax 202.06(d). Thus, this decision is based on the information in the file and the Town’s evidence at hearing.

The Taxpayer argued the assessment was excessive because:  
(1) an appraisal prepared by Brian Paul Lessard (the “Lessard Appraisal” - “Taxpayer Exhibit No. 1”) indicated the Property had a market value of \$125,000;

(2) the Lessard Appraisal had an effective date of May 11, 2009, which is proximate to the date of assessment; and

(3) the Lessard Appraisal utilized the sales of four comparable properties to arrive at the market value.

The Town argued the assessment was proper because:

(1) the location of the Property is more desirable than the locations of the comparable sale properties in the Lessard Appraisal, which are located in Alstead, Unity, Charlestown and Goshen and no adjustments for locational differences were made;

(2) the Property has one and one-half bathrooms and the comparable sale properties have one bathroom; however, the Lessard Appraisal did not make any adjustments for the number of bathrooms. As stated in the Lessard Appraisal, an appropriate adjustment for a half-bathroom would be \$500;

(3) the Lessard Appraisal states only gross living area (“GLA”) adjustments greater than \$1,000 were utilized. However, the GLA adjustments on the sales comparison grid are not consistent with this statement;

(4) the Property is 5.25 acres in size, substantially larger than the comparable properties which are 1.8, 3.03, 0.14 and 0.80 acres, respectively, and no adjustments were made for lot size which should be in the range of \$1,500 per acre;

(5) the comparable sale located in Alstead (Comparable Sale #1) is incorrectly listed as having a full basement when it actually has a crawl space; an appropriate adjustment for the difference between a basement and a crawl space is \$5,000;

(6) the comparable sale located in Unity (Comparable Sale #2) was listed as superior to the Property for condition as it was renovated; however, the Property has had significant renovations since 2002 and is in similar condition to Comparable Sale #2; and

(7) after the above corrections are made to the Lessard Appraisal, it supports the assessed value and no abatement is warranted.

The Town stipulated the level of assessment for tax year 2009 was 107.2%, the median ratio computed by the department of revenue administration.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer failed to meet his burden of proving the assessment was disproportional. The appeal is therefore denied for the following reasons.

Assessments must be based on market value adjusted by the level of assessment in the City. See RSA 75:1; and Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). In order to prevail in his tax abatement appeal, the Taxpayer had the burden of proving the market value of the Property was less than \$136,500, the assessment under appeal (\$146,400) adjusted by the level of assessment in the Town for tax year 2008 (107.2%).

The Taxpayer submitted the Lessard Appraisal which indicated the market value of the Property was \$125,000. The Town argued the Lessard Appraisal did not adequately adjust the comparables for various factors (location, size, condition, etc.). The board has the discretion to evaluate and determine whether any piece of evidence is indicative of market value. See Society Hill at Merrimack Condominium Association v. Town of Merrimack, 139 N.H. 253, 256 (1994); and Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). In evaluating the evidence, the board finds the corrections to the Lessard Appraisal as testified to by the Town are reasonable and appropriate in determining the market value of the Property. After applying the corrections to the Lessard Appraisal, the board concludes the Property's market value was in the range of \$133,700 to \$135,500, rounded.

In arriving at a judgment regarding proportionality, the board applies its learning and experience in taxation, real estate appraisal and valuation. See RSA 71-B:1; and RSA 541-A:33,

VI. Applying the Town's equalization ratio of 107.2% for the 2009 tax year to the market value range indicates an assessment for the Property in the range of \$143,326 to \$145,256, which is supportive of the assessed value of \$146,400. Arriving at a proper assessment is not an exact science, but a process requiring use 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. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993). Therefore, based on the evidence the board finds the Lessard Appraisal, with corrections, to be generally supportive of the assessed value and no abatement is warranted.

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

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Michele E. LeBrun, Chair

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: David P. Fedelski, PO Box 474, Alstead, NH 03602, Taxpayer; Chairman, Board of Selectmen, 122 NH Route 12A – Unit 1, Langdon, NH 03602; Commerford Nieder Perkins, 556 Pembroke Street – Suite #1, Pembroke, NH 03275, Contracted Assessing Firm.

Date: 7/28/11

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Anne M. Stelmach, Clerk