

Thor A. and Shirley Malek

v.

Town of Gilmanton

Docket No.: 25111-09PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2009 assessment of \$506,374 (land \$106,174; building \$400,200) on Map 126/Lot 06, a single family home on 12.920 acres in current use (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 requested and the board granted leave to not attend the hearing. Tax 202.06(d). Thus, the board has based its decision on the information in the file and the Town’s evidence at hearing.

The Taxpayers argued the assessment was excessive because:

- (1) the land value is overassessed compared to neighboring properties including some with large pastures and road frontage;
- (2) additional fireplaces, beyond two, should not be assessed; and
- (3) the attic should be classified as it “historically has been.”

The Town argued the assessment was proper because:

- (1) the Taxpayers purchased the Property for \$650,000 on July 2, 2007;
- (2) the Property was adequately exposed to the market and was considered an arm’s-length transaction;
- (3) the Property was inspected on June 24, 2009; based on the inspection it was determined the reclassification of the third floor (“attic”) space is correct as half-story finished and is finished with four rooms, two of which are bedrooms;
- (4) the fireplaces were a selling point in the 2007 MLS listing; the fact the Taxpayers have chosen to cover the openings does not affect their contributory value to the Property;
- (5) the home site is enhanced by its pastoral setting thus the primary site value is superior to the comparables in the neighborhood noted by the Taxpayers;
- (6) the current use land is correctly classified as farmland “based upon the soils and use of the land as pasture;” and
- (7) based on the inspection and revision of the assessment-record card, the Property is appropriately assessed and the Taxpayers are not entitled to an abatement.

Board’s Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed.

Assessments must be based on market value. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (2003). In order to prevail in a tax abatement appeal, the Taxpayers have the burden of proving the market value of the Property as of the assessment date was less than the assessed value adjusted by the 2009 level of assessment in the Town (96.1%). The board has the discretion to evaluate and determine whether any piece of evidence is indicative of market value. Cf., Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); and Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980).

In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a Taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). Even if a Taxpayer wishes to challenge only one component of the assessment, such as the land value or the building value (or number of fireplaces), the Taxpayer still has the burden of proving the aggregate value of the Property as a whole is disproportional and the total assessment is excessive in order to obtain an abatement. Appeal of Walsh, 156 N.H. 347, 356 (2007).

The Property was purchased by the Taxpayers on July 2, 2007 for \$650,000. There was no evidence submitted to suggest this purchase was not an arm's-length transaction. In fact, the evidence confirms the Property was adequately exposed to the market, was verified by the buyers as a fair market sale on the department of revenue administration's PA34 form (filed at the time of transfer) and conventional financing was attained for the purchase. Where it is demonstrated that 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);

see also Poorvu v. City of Nashua, 118 N.H., 632-633 (1978) (The price paid by the owner is one of the best indicators of that property's value.”).

Adjusting the July 2, 2007 sale price to the date of appeal (April 2009) by the Town's indicated market condition adjustment factor of minus one-half percent indicates a market value as of April 2009 of \$581,750. The 2009 “ad valorem” assessment of \$527,400 (buildings \$385,700; 0.92 acre base value of \$103,100 and 12.00 acre current use ad valorem value of \$38,600) when equalized by the 2009 ratio of 96.1% arrives at an indicated market value of \$548,800 which is less than the time adjusted sale price. Therefore, the board finds the Property is not overassessed and the appeal 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).

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Thor A. and Shirley Malek, 97 Currier Hill Road, Gilmanton, NH 03237, Taxpayers; Chairman, Board of Selectmen, Town of Gilmanton, PO Box 550, Gilmanton, NH 03237; and George Hildum, 2 Sanborn Road, Concord, NH 03301, Contracted Assessing Firm.

Date: 7/14/11

Anne M. Stelmach, Clerk