

Dorothy J. Savery and David H. Williams

v.

Town of Gilford

Docket No.: 25749-10PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2010 assessment of \$318,180 (land \$80,680; building \$237,500) on Map 203/Lot 201, 56 Vincent Drive, a single-family home on 1.74 acres (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 argued the assessment was excessive because:

1) the Taxpayers acquired the Property in April, 2010 at an “actively attended” foreclosure auction from the Federal National Mortgage Association (“FNMA” or “FannieMae”) for \$210,000, the highest bid received at the auction;

- (2) prior to the auction, the Property was listed for sale with a real estate broker and advertised in NNEREN, a multiple-listing service, with an asking price of \$294,900 which was subsequently reduced to \$284,900, \$269,900 and then to \$249,900 (see Taxpayer Exhibit No. 2);
- (3) the Taxpayers are “typical” buyers and the sale price of \$210,000 was a good indication of market value as of the April 2010 sale date;
- (4) an appraisal prepared for financing purposes arrived at an opinion of market value of \$248,000 as of March 26, 2010 (see the “Stecher Appraisal”, Taxpayer Exhibit No. 3); and
- (5) the sale price of the Property is the best indication of market value, and the assessment should be reduced to \$201,600 (\$210,000 sale price adjusted by the level of assessment).

The Town argued the assessment was proper because:

- (1) the Stecher Appraisal is flawed as it does not make appropriate adjustments for physical differences between the Property and the comparable sales, including size, condition and location;
- (2) an appraisal report prepared by Wil Corcoran arrives at a market value conclusion of \$344,500, which is supportive of the assessed value (see the “Corcoran Appraisal”, Municipality Exhibit A);
- (3) the comparable sales utilized in the Corcoran Appraisal are more appropriate comparables than those utilized in the Stecher Appraisal, and include two in very close proximity to the Property (Comparable Sale #1 and #2, 24 Hillside Drive and 90 Countryside Drive);
- (4) the sale price of the Property is not indicative of its market value as it was sold by a financial institution after a foreclosure, and the Town’s analysis supports the conclusion that these types of sale transactions do not represent fair market value; and
- (5) the appeal should be denied.

The parties agree the level of assessment in the Town was 96% for tax year 2010, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not meet their burden of proving disproportionality and the appeal is denied.

“In an abatement case, the taxpayer has the burden of proving by a preponderance of the evidence that the property at issue was assessed disproportionately to other property in the Town.” Appeal of Sokolow, 137 N.H. at 643. To prevail in this appeal, the Taxpayers have the burden of establishing the market value of the Property was below the equalized value reflected in the abated assessment. (\$318,180 assessment divided by 96% level of assessment = \$331,400, rounded, indicated market value as of April 1, 2010 assessment date.)

The Taxpayers purchased the Property in April, 2010 for \$210,000 at an auction after it was foreclosed upon. The Taxpayers submitted evidence regarding the listing of the Property, including the original listing price of \$294,900 and several subsequent reductions in price to \$249,900 prior to being auctioned. Further, the Taxpayers testified they were “typical” buyers and that the sale price is the best evidence of market value as of April 1, 2010.

While the sale price is some evidence of the Property's market value, it is not necessarily conclusive evidence. 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). However, 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).

In this instance, the board finds the sale price is not indicative of market value, as it was sold by a financial institution after a foreclosure. The board does not mean to imply that a sale price of a property after a foreclosure is never a reliable indication of market value. Here, however, the Town presented a specific, credible analysis that enabled the board to find this sales price of the Property in this time period did not reflect market value. (See Municipality Exhibit A, pp. 12-17.)

The Taxpayers presented the Stecher Appraisal, which concluded with an opinion of market value of \$248,000 as of March 26, 2010. The Stecher Appraisal utilized the sales comparison approach to value, and selected three comparable sales that occurred between August, 2009 and January, 2010 with sale prices ranging from \$217,000 to \$275,000.

Additionally, the Town presented the Corcoran Appraisal, which concluded with an opinion of market value of \$344,500 as of April 1, 2010. The Corcoran Appraisal also utilized the sales comparison approach to value, and utilized the sales of four properties that occurred between May, 2010 and June, 2010 with sale prices ranging from \$267,000 to \$375,000.

To determine whether an abatement is warranted, the board has considered and weighed the market value evidence presented, utilizing its “experience, technical competence and specialized knowledge.” See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it.”) Further, in making its findings where there is conflicting evidence, the board must determine for itself the credibility of the witnesses and the weight to be given the testimony of each because “judgment is the touchstone.” See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co.

v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

The board reviewed all of the evidence in its totality, and finds that both the Stecher and Corcoran Appraisal provide some evidence of market value. After careful consideration, the board was persuaded that the best evidence of market value is the following three sales:

Address	Sale Date	Sales Price	Size (SF)	
36 Countryside Drive	9/24/2009	\$275,000	1,958	Stecher Appraisal, Comp. #2
24 Hillside Drive	6/3/2010	\$375,000	1,696	Corcoran Appraisal, Comp. #1
90 Countryside Drive	6/28/2010	\$267,000	1,824	Corcoran Appraisal, Comp. #2

These three comparable sales are in very close proximity to the Property (the comparable sales on Countryside Drive are in the same subdivision as the Property, and the sale on Hillside Drive is an “off-shoot” of that same subdivision). The condition of 36 Countryside Drive and 24 Hillside Drive are superior to the Property, and downward adjustments would be appropriate. However, the Property is substantially larger (2,524 square feet) than all three comparables, and upward adjustments would be required. After all adjustments are made, the three sales generally support the proportionality of the assessment. Specifically, the board finds the sale of 24 Hillside Drive to be most indicative of market value for the Property, and after all adjustments are taken into consideration, a market value indication of \$351,500 is arrived at, which is supportive of the assessment under appeal. (See Municipality Exhibit A, p. 25.)

For all these reasons, 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).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Dorothy J. Savery and David H. Williams, 56 Vincent Drive, Gilford, NH 03249, Taxpayers; Chairman, Board of Selectmen, Town of Gilford, 47 Cherry Valley Road, Route 11A, Gilford, NH 03249; and Corcoran Consulting Associates, Inc., Bayside Village, PO Box 1175, Wolfeboro Falls, NH 03896, Contracted Assessing Firm.

Date: 2/5/13

Anne M. Stelmach, Clerk