

Ronald and Nancy Gocht

v.

Town of Swanzey

Docket No.: 26520-11PT

Russell and Nancy Gocht

v.

Town of Swanzey

Docket No.: 26920-12PT

DECISION

The “Taxpayers’” appeal, pursuant to RSA 76:16-a, the “Town’s” 2011 and 2012 assessments of \$416,700 (land \$323,600; building \$93,100) on Map 45/Lot 12, 46 East Shore Road, a single-family home on 1.06 acres (the “Property”). Because the Property was under separate, but related, ownership for each of the tax years, the board consolidated the appeals for hearing. For the reasons stated below, the appeals for abatement are granted.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were 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 assessments were higher than the general level of assessment in the municipality.

Id. The board finds the Taxpayers met this burden.

The Taxpayers, represented by Russell Gocht, argued the assessments were excessive because:

- (1) the Property is a seasonal camp with 202 feet of water frontage on Swanzev Lake but, due to the Shoreline Protection Act and town ordinances, the structure (approximately 1,000 square feet) cannot be expanded¹;
- (2) an appraisal prepared by Steven D. Ascani of Ascani & Associates ("Ascani Appraisal," Taxpayer Exhibit No. 1) estimates the value of the Property was \$250,000 as of August 24, 2012;
- (3) Mr. Ascani utilized three comparable sales in arriving at his estimated value; however, because of the lack of comparable sales in the Town, only one sale (52 East Shore Road, which abuts the Property) was located in the Town with the remaining sales in Rindge (on Lake Monomonac) and Harrisville (on Harrisville Pond);
- (4) two additional comparable sales (4 Brown Lane which sold for \$300,000 on August 19, 2009 and 103 West Shore Road which sold for \$328,000 on September 20, 2013) support the fact the Property is overassessed (see Taxpayer Exhibit No. 2); and
- (5) the indicated market value of the Property for tax years 2011 and 2012 did not change and is \$250,000 which should result in an assessed value of \$275,000, determined by averaging the 2011 (106.4%) and 2012 (113.6%) levels of assessment in the Town.

¹ The Taxpayer provided testimony regarding three appeals to the Town zoning board to improve and expand the Property. These appeals were denied and the denials were affirmed on appeals to the superior court and the supreme court.

The Town recommended abating the 2011 assessment to \$341,200 and the 2012 assessment to \$320,700 and argued no further abatements are proper because:

- (1) 52 East Shore Road is the only comparable sale in the Town and sold for \$297,500 on December 27, 2011;
- (2) based on this sale, the Town now finds the indicated market value of the Property for both tax years was \$320,700, as shown in Municipality Exhibits A and B; and
- (3) the assessments should be abated based on this \$320,700 value.

The parties agreed the levels of assessment were 106.4% in tax year 2011 and 113.6% in tax year 2012, the median ratios calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayers met their burden of proving disproportionality and the most reasonable estimate of the Property's market value is \$300,000, rounded, in both tax years; when this estimate is adjusted by the levels of assessment, the assessments are abated to \$319,200 for tax year 2011 and \$340,800 for tax year 2012. The appeals are therefore granted for the following reasons.

The board finds the most comparable sale to be 52 East Shore Road, which sold for \$297,500 in December, 2011. This comparable is "Next Door," i.e., it abuts the Property on Swanze Lake. Both parties relied on this comparable in their presentations, but applied different adjustments to the sale price. The board finds, when appropriate adjustments are made for amount of waterfront and lot size differences, as well as other features (such as the fact 52 East Shore Drive, according to the assessment-record card, has a "shared" septic and well), this comparable indicates the Property had a likely market value of \$300,000, rounded. While one

sale does not necessarily ‘make the market,’ the board finds the totality of the evidence presented, as well as the parties’ agreement regarding its comparability, makes the 52 East Shore Road sale the most reliable indicator of market value for the Property.

If the taxes have been paid, the amount paid on the value in excess of \$319,200 in tax year 2011 and \$340,800 in tax year 2012 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 \$340,800 ordered assessment for subsequent years. RSA 76:17-c, I and II.

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

Albert F. Shamash, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Russell and Nancy Gocht, 8 Paul Revere Road, Bedford, MA 01780, representatives for the 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: March 31, 2014

Anne M. Stelmach, Clerk