

**Karen E. Rogers**

**v.**

**City of Franklin**

**Docket No.: 27005-12PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2012 abated assessment of \$194,800 (land \$42,900; building \$151,900) on Map 134/Lot 112, 59 Proctor Street, a single family home on 0.820 acres (the “Property”). For the reasons stated below, the appeal for further 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. The board finds the Taxpayer failed to prove disproportionality.

The Taxpayer, represented by Douglas Rogers (her father), argued the assessment was excessive because:

- (1) the Property is in an “inner city” neighborhood improved with many small houses, some of which are being “repossessed,” and is located next to a hospice facility and across the street from a “Section 8” apartment building (as shown by the maps and photographs in the third tab of Taxpayer Exhibit No. 1) that negatively impact market value;
- (2) “Trulia.com” (as shown on a website page printed on “3/1/2013,” also in Taxpayer Exhibit No. 1) estimates the value of the Property was \$140,000 and states the average price of “similar recently sold homes is \$126,000”;
- (3) two properties in this neighborhood (91 and 100 Chestnut Street) were on the market for an extended period of time before eventually selling for \$120,000 and \$126,000, respectively;
- (4) the Property has an old furnace and some moldy tile in the shower and the comparable sales utilized by the City to defend the assessment are in better condition in superior locations; and
- (5) the assessment should be abated to \$166,300, based on a market value of \$140,000 adjusted by the level of assessment.

The City, represented by its contract assessor, J. Roy Smith with Corcoran Consulting Associates, Inc., argued the assessment was proper because:

- (1) the Property, located in a well-established neighborhood, is improved with a 1,436 square foot ranch style residence in generally average condition and has an additional 1,170 square feet of finished living area in the basement;
- (2) the Taxpayer relied upon comparable sales that were distressed (e.g., foreclosure, bank sales, short sales, etc.) and are not reflective of market value;

(3) the Town inspected the Property and abated the assessment from \$214,000 to \$194,800 (in May, 2014 prior to the hearing of this appeal);

(4) as shown in Municipality Exhibit A, the City found four arm's-length comparable sales and, after appropriate adjustments were made to account for differences, arrived at a market value indication of \$180,000 for the Property, which is supportive of the assessment under appeal; and

(5) the appeal should be denied.

The parties do not dispute the level of assessment in the City for tax year 2012 was 118.8%, the median ratio as calculated by the department of revenue administration.

### **Board's Rulings**

Based on the evidence presented, the board finds the Taxpayer did not carry her burden of proving disproportionality. The appeal is therefore denied for the following reasons.

To succeed on a tax abatement claim, the Taxpayer has the burden of proving by a preponderance of the evidence she is paying more than her proportional share of taxes. Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). To carry her burden, the Taxpayer should have made a showing the market value of the Property in tax year 2012 was less than the \$164,000 equalized value -- the abated assessment adjusted by the level of assessment ( $\$194,800 / 118.8\%$ , rounded).

The Taxpayer argued the market value of the Property, as of April 1, 2012, was \$140,000, less than 15% below this equalized value. The Taxpayer did not present an independent appraisal or other market analysis by a competent real estate professional. Instead, as noted above, the Taxpayer relied primarily on information from Trulia.com. to make this argument. One page copied from this website (in March, 2013, 11 months after the assessment

date) mentions the \$140,000 value and states “the average sales price for similar recently sold homes is \$126,960.” (See Taxpayer Exhibit No. 1, Tab 3, p. 3.)

For a host of reasons, the board can give this one page printout no probative weight. First, while Trulia.com does present information from public sources that may be of some use to buyers, sellers, tenants and landlords in the residential market, neither the board nor the supreme court has yet recognized Trulia.com to be a reliable and credible source for estimating the market value of a specific property. Trulia.com relies on public information and calculates “averages” without releasing important clarifying information such as sample size and data source(s) and how, if at all, any of the information presented on its website has been verified for accuracy.

Second, the Taxpayer did not supply any information to the board to help ascertain what criteria this website utilized in arriving at the \$140,000 estimate. For example, no information is given regarding how many sales of what types of properties in what time period were used by Trulia.com to arrive at this calculation and whether or not any adjustments were made for time of sale and other factors.

Third, in the board’s experience, even when comparable sales in a relevant time period are presented, the “averaging” of sales prices does not necessarily give a credible indication of the market value of a specific property. Rather, analyzing, comparing, and weighing sales data and then correlating the most pertinent aspects of the sales to the Property is recognized as a better method for arriving at a reliable indication of market value. (See, e.g., Lowe v. City of Portsmouth, BTLA Docket No. 25453-10PT (May 30, 2013) at p. 4.)

The Taxpayer also argued at some length regarding how properties in the immediate vicinity negatively impact the market value of the Property, but did not present any independent evidence to establish this claim, such as with testimony from a knowledgeable real estate

professional. The board is familiar with the mix of housing in the City: the fact a hospice and a “Section 8” apartment building are located near the Property does not, in and of itself, establish an adverse market value impact.

The Taxpayer submitted information on four sales to help satisfy her burden of proving disproportionality. The Taxpayer did not, however, present a specific analysis regarding how the physical differences between the comparable sales and the Property should be adjusted for. (See Taxpayer Exhibit No. 1, Tab 3, pp. 8-16.)

The City countered this evidence with testimony and an appraisal prepared by its contract assessor (the “Smith Report,” Municipality Exhibit A). Mr. Smith utilized the comparable sales approach to value the Property with four arm’s-length sales, adjusting for location, size and other differences, and arrived at a market value opinion of \$180,300 as of the April 1, 2012 assessment date. (See the “Direct Sales Comparison Analysis” page in the Smith Report.)

This board, as a quasi-judicial body, must weigh the evidence presented 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) (administrative board may use expertise and experience to evaluate evidence). After carefully reviewing the evidence, including the comparables submitted by the parties, the board find the following four comparables provide the best indication of market value for the Property as of the assessment date: 230 Victory Drive, which sold in December, 2011 for \$159,900; 25 Edwards Street, which sold in December, 2012 for \$148,000; 55 Clark Street, which sold in November, 2012 for \$140,000; and 283 Prospect Street, which sold in July, 2012 for \$180,000.<sup>1</sup> The board considered the conditions of each sale and their differences with the Property (i.e., possibly

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<sup>1</sup> 230 Victory Drive and 283 Prospect Street were presented by the City and 25 Edwards Street and 55 Clark Street were presented by the Taxpayer. (See Municipality Exhibit A and Taxpayer Exhibit No. 1, Tab 3.)

atypical buyer and/or seller motivation, length of market exposure, lot size, location, views, house size, room count, and other amenities including garages, finished basements, fireplaces, etc.). After making reasonable adjustments to account for the relevant differences, the board finds these comparable sales provide a range of market value indications for the Property from \$159,000 to \$168,000.

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). As noted above, the 2012 abatement assessment (\$194,800), when adjusted by the level of assessment (118.8%), reflects a market value of \$164,000. The board finds the range of market value indications resulting from analysis of the comparable sale properties (\$159,000 to \$168,000) is generally supportive of the proportionality of the tax year 2012 assessment under appeal.

Consequently, 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

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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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Albert F. Shamash, Member

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Theresa M. Walker, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Douglas A. Rogers, 302 Chance Pond Road, Franklin, NH 03235, representative for the Taxpayer; City of Franklin Assessing Department, 316 Central Street, Franklin, NH 03235; and Corcoran Consulting Associates, Inc., Bayside Village, PO Box 1175, Wolfeboro Falls, NH 03896, Contracted Assessing Firm.

Date: 01/21/15

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Anne M. Stelmach, Clerk