

Douglas P. and Mary A. Embree and Steven Dubois

v.

Town of Tilton

Docket No.: 27031-12PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2012 assessment of \$127,500 (land \$37,700; building \$89,800) on Map U04/Lot 45, 29 Morrison Avenue, a single family home on 0.14 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. The Taxpayer finds the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the house on the Property is a “gambrel” and the second floor has less square footage (about 500 square feet) than the square footage (672) shown on the Town’s assessment-record card (“ARC”);
 - (2) while the house is “not in poor shape,” it is “old” and has a heating system that will have to be replaced and an unrenovated kitchen and other features;
 - (3) the Town did not apply adequate depreciation to the house and overvalued the land;
 - (4) the Town used sales to support the assessed value that are not comparable to the Property;
- and
- (5) the assessment should be abated based on a market value of not more than \$90,000.

The Town argued the assessment was proper because:

- (1) the Taxpayers purchased the Property in 2007 at an auction for “\$108,533,” as shown on the ARC;
- (2) when the Taxpayers refinanced the Property, an appraisal estimated the market value of the Property was \$109,000 (as of December 14, 2012) and this appraisal is attached to the appeal document they filed with the board;
- (3) the Town does not believe residential values have declined in the Town to the extent argued by the Taxpayers;
- (4) the comparable sales analysis presented by the Town (in Municipality Exhibit A) indicates a range of value that is supportive of the proportionality of the assessment under appeal; and
- (5) the Taxpayers did not meet their burden of proving disproportionality and the appeal should be denied.

The parties did not dispute the level of assessment in the Town was 108.7% in tax year 2012, 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 proof and the appeal is denied.

As the Taxpayers appear to recognize, an assessment must be based on market value adjusted by the level of assessment. See RSA 75:1 and Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003); see also Embree v. City of Franklin, BTLA Docket No. 27032-12PT (August 18, 2014). In order to obtain an abatement, the Taxpayers needed to prove the market value of the Property was substantially below the equalized value of the assessment under appeal: \$127,500 assessment divided by 108.7% level of assessment = \$117,300, rounded.

As noted above, the Taxpayers purchased the Property at an auction in October, 2007 for \$108,533. One of the Taxpayers (Mr. Embree, a real estate broker) testified the market declined substantially between 2007 and 2012, but no credible evidence to document this decline was submitted as evidence in this appeal.

The Taxpayers did not present an appraisal or any other market based evidence to support their belief that the value of the Property was \$90,000 as of the April 1, 2012 assessment date. The Town's representative (Loren Martin of Avitar Associates of New England, Inc.) noted an appraisal (prepared at the time the Taxpayers refinanced the Property in December, 2012) estimated a market value of \$109,000, which is within about seven percent of the equalized value of the assessment (\$117,300). She further argued the \$109,000 appraised value understated the market value of the Property because this appraisal utilized a foreclosure sale and a bank sale.

For its part, the Town presented a sales analysis (Municipality Exhibit A) using five comparable sales. Ms. Martin stated the “best comparable” is 38 Morrison Avenue, located on the same street and in the same neighborhood, which sold on September 30, 2011 (just six months prior to the assessment date) for \$142,000. Making appropriate size and other adjustments to this and the other comparables, she calculated a value range and average and median values that are supportive of the assessment. The board finds the Town’s analysis is credible evidence of market value that supports the proportionality of the assessment.

For all of these reasons, the board finds the Taxpayers failed to meet their burden of proving disproportionality. The appeal is therefore 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

Albert F. Shamash, Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Douglas P. and Mary A. Embree, 28 Liberty Ave., Franklin, NH 03235 and Steven Dubois, 29 Morrison Avenue, Tilton, NH 03276, Taxpayers; Chairman, Board of Selectmen, Town of Tilton, 257 Main Street, Tilton, NH 03276; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: April 8, 2015

Anne M. Stelmach, Clerk