

Doug and Mary Embree

v.

City of Franklin

Docket No.: 27032-12PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “City’s” 2012 abated assessment of \$155,600 (land \$34,000; building \$121,600) on Map 115/Lot 045, 28 Liberty Avenue, a single family home on 0.39 acres (the “Property”). For the reasons stated below, the appeal for further 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 board finds the Taxpayers failed to prove disproportionality.

The Taxpayers argued the abated assessment was still excessive because:

(1) one of the Taxpayers (Mr. Embree) has 41 years of experience as a real estate agent and has knowledge of how appraisers should value property;

- (2) an appraisal prepared by Anne Glines of LAP Appraisals, LLC (the “Glines Appraisal,” Taxpayer Exhibit No. 1) arrived at a \$133,000 market value conclusion as of May 5, 2011, and property values further declined between the date of this appraisal and the April 1, 2012 assessment date;
- (3) the City’s sales analysis is flawed and overstates the value of the Property and “most appraisers” would agree with these conclusions;
- (4) after proper adjustments, the market value of the Property, based upon the evidence submitted, is no more than \$120,000 to \$125,000; and
- (5) the assessment should be abated accordingly.

The City argued the abated assessment was proper because:

- (1) the City does not rely on bank sales, short sales or foreclosure sales because, based on its own analysis, these properties sell for substantially less than other properties;
- (2) the Glines Appraisal submitted by the Taxpayers was prepared for financing purposes and relies primarily on non-market sales which do not result in a credible market value conclusion;
- (3) the City’s own analysis of market sales and comparable properties prepared by J. Roy Smith (the “Smith Analysis”) supports the proportionality of the assessment (see Municipality Exhibits A and B);
- (4) applying the level of assessment to the market value estimate indicates the Property is, if anything, underassessed rather than overassessed; and
- (5) no further abatement is warranted and the appeal should be denied.

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

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed in tax year 2012. The appeal is denied for the following reasons.

Assessments must be based on market values adjustment by the level of assessment. See RSA 75:1 and Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). In order to obtain an abatement, the Taxpayers needed to meet the burden of proving the market value of the Property was substantially below the equalized value of the abated assessment under appeal: \$155,600 assessment divided by 118.8% level of assessment = \$131,000, rounded.

As noted above, the Taxpayers relied on the Glines Appraisal which estimated a value of \$133,000 in May, 2011. The board notes this market value conclusion is \$2,000 more than the equalized value and therefore, if this appraisal is accepted at face value, it supports the proportionality of the abated assessment. The Glines Appraisal utilized four comparable sales and two current listings. Comparable Sale Nos. 1 and 2 were bank/foreclosure sales and the two remaining sales, after adjustments, provide value indications of \$140,300 and \$144,200, a range that is clearly above the equalized value (\$131,000).

While the Taxpayers argued the value of the Property is "no more than \$125,000," the board does not agree they carried their burden of proof on this issue. Even if, for the sake of argument, a market value finding of \$125,000 was possible, this would still be within an acceptable range of the equalized value (approximately \$6,000 or 4.6%) and no further abatement would be warranted. 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).

The City relied upon the Smith Analysis, which utilized four arm's-length sales transactions that occurred between December, 2011 and July, 2012 to support the proportionality of the assessment. This analysis indicated the market value of the Property was \$154,000, which, when the level of assessment is applied, indicates a proportional assessment of \$183,000 ($\$154,000 * 118.8\%$). The Taxpayers argued the Smith Analysis overstates the contributory value of the finished portion of the Property's basement and made improper adjustments for differences in lot sizes. The board finds, however, even if the Taxpayers' criticisms of the Smith Analysis are given some weight, the adjustments would still support the proportionality of the assessment of proving the Property was disproportionately assessed in tax year 2012.

For all these reasons, the board finds the Taxpayers did not carry their burden and 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

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: Doug and Mary Embree, 28 Liberty Ave., Franklin, NH 03235, Taxpayers; 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: August 18, 2014

Anne M. Stelmach, Clerk