

Mark H. and Nancy O. Watson

v.

City of Laconia

Docket No.: 17800-98PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1998 assessment of \$82,400 (land \$37,500; buildings \$44,900) on a .26-acre lot with a three-family dwelling (the "Property"). The Taxpayers also own, but did not appeal, a .2-acre lot with a two-family dwelling assessed at \$96,600, which the Taxpayers believe was fairly assessed. 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, 38 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 Property is a converted single-family home that should have been left as a single-family structure;
- (2) the Property's location on a raised lot limits its "curb appeal" as a commercial property;
- (3) an appraisal performed for financing purposes estimated the Property's market value at \$60,000 in January 1998;
- (4) the Taxpayers paid \$60,000 for the Property on February 23, 1998, and sold it one-and-one-half years later, on March 15, 2000, for \$65,000; and
- (5) the Property has poor parking for commercial use (only three spaces behind the building).

The City argued the assessment was proper because:

- (1) the City's comparable sales are located in a commercial zone and, therefore, they are more appropriate than the Taxpayers' comparables, which are located in a residential zone;
- (2) there is plenty of street parking for commercial use; and
- (3) the Property and the abutting property were sold as a package, which may explain the low sales price allocated to the Property.

Board's Rulings

The board finds the Taxpayers failed to prove the Property was not disproportionately assessed.

The Taxpayers' representative testified that the Property was purchased in December 1997 for \$60,000 in an arm's-length transaction and that this is a good indication of market value. The board finds, in this case, the selling price is not conclusive evidence of market value. The Property was sold in conjunction with an abutting property; this raises a question as to how

the actual selling price was derived or allocated. Although the two abutting properties were listed for sale separately, the Taxpayers' representative testified it was not possible for a potential purchaser to negotiate on just one of the properties. All potential purchasers were informed the properties would be sold together. Additionally, the Property was on the market for approximately two months prior to its sale. This, coupled with the fact the appraisal stated average selling times were three to six months for properties of this type, indicates the sale price may not be evidence of true market value. The fact that both properties had to be purchased together raises the question of whether the values placed on the two properties were simply an allocation into two parts of the total selling price of the two properties or were actual values determined by an independent valuation. The board is not convinced the \$60,000 value assigned to the Property was derived from the market, without consideration of the value associated with the abutting building.

The Taxpayers' representative stated the appraisal had been performed for lending purposes. The City disputed several of the adjustments contained in the appraisal's sales comparison approach grid for items such as location, quality of construction, condition and size of the structure. The City stated the adjustments made in the appraisal did not reflect the Property's actual situation. The Taxpayers' representative did not rebut the City's assertions; in fact, the Taxpayers' representative agreed with some of the City's comments about revising the adjustments. The board notes the City's comparable sales, which the City testified were located in more comparable locations, supported the assessment.

The board also notes the appraisal's cost approach reflected a significantly higher figure

than either the selling price or the City's equalized assessment. Further, within the cost approach, the site valuation was substantially lower than the City's land assessment on the Property. The appraisal did not provide any data supporting this lower land value. While typically the cost approach is not considered a reliable estimate of value on properties of an age similar to the Property, neither the Taxpayers' representative nor the appraisal reconciled the discrepancies in the valuation.

The Taxpayers' representative testified the annual gross potential income was \$13,300, as shown on the realtor's listing sheet, to support a \$65,000 market value. However, the Taxpayers' representative submitted a consulting analysis that gave the gross potential income as \$14,400 (\$1,200 per month x 12 months). Using the higher income figure results in a value more in line with the City's assessment than the \$60,000 selling price.

Therefore, for all the above reasons, the board finds the Taxpayers failed to carry their burden.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed 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(e). 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to R. William Gordon, Representative for Mark H. and Nancy O. Watson, Taxpayers; and Chairman, Board of Assessors of Laconia.

Date: July 3, 2000

Lynn M. Wheeler, Clerk

0006
Board/MLDRAS/17800-98

Mark H. and Nancy O. Watson

v.

City of Laconia

Docket No.: 17800-98PT

ORDER

This order responds to the Taxpayers' motion for rehearing, which is denied. The motion does not demonstrate the board erred in its decision and does not show any "good reason" or adequate grounds to grant a rehearing. See RSA 541:3 and TAX 201.37(d).¹

The board reviewed the record in this case and finds the July 3, 2000 decision is clear and addresses the principal rehearing arguments. The board notes that page 1, lines 3 and 4 of its

¹ "**Grounds.** Rehearing motions shall only be granted for 'good reason,' pursuant to RSA 541:3, and a showing shall be required that the Board overlooked or misapprehended the facts or the law and such error affected the Board's decision. Rehearing motions shall not be granted for harmless error, meaning errors that, if corrected, would not challenge the Board's ultimate decision."

decision can be modified to reflect the Taxpayers' argument that the non-appealed property has "retail space... and two apartments," but this modification does not require a rehearing. Cf. footnote 1 supra ("harmless error").

The Taxpayers' appeal to the board and the rehearing motion were filed with the aid of R. William Gordon ("Mr. Gordon") as their designated representative. However, the Taxpayers did not attend the hearing but were represented by another person, Mr. Nick Sangillo ("Mr. Sangillo"), who indicated he worked with Mr. Gordon on appraisals and tax abatement work.

In the rehearing motion, Mr. Gordon and the Taxpayers argue the board did not determine a market value of the Property by law by considering its sale price. While the sale price of a property is some evidence of its market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). However, where it is demonstrated that the sale price was an arm's-length market sale, the sale price is one of the "best indicators of the property's value." Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988). In this case, the board finds that given the necessity for the purchase of both properties together, as testified to by Mr. Sangillo, it is not convinced the sale was consummated in an arm's-length transaction. For confirmation of the true facts, the board has reviewed the tape of the hearing (at index #1090 to #1170) wherein Mr. Sangillo testified it was necessary to purchase both properties together (because the Property was not available without the purchase of the other multi-use abutting property), that there were family circumstances pertaining to the sale and the "bank wanted the number to come in." This evidence directly conflicts with several

statements in the rehearing motion.

The board reminds the Taxpayers the burden of proof rests with them to prove the Property was overassessed or disproportionately assessed. When a taxpayer owns more than one property in a municipality but chooses to appeal the assessment on some but not all of the properties, the board must still consider the assessments on the taxpayer's non-appealed properties in the same municipality. Appeal of the Town of Sunapee, 126 N.H. 214, 217 (1985).

It is necessary for the Taxpayers to show that their entire estate was overassessed. A taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of the properties is disproportionate. See also Bemis Brothers Bag Co. v. Claremont, 98 N.H. 446, 451 (1954) ("Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant."). Therefore, when a taxpayer owns more than one parcel, an appeal for abatement on any one property will always require consideration of the assessments of any other properties.

Further, the board received no evidence as to the market value of the non-appealed property. Mr. Sangillo did testify at the hearing that he thought the non-appealed property was fairly assessed. However, this response does not indicate any consideration of the non-appealed property's market value. No evidence was presented at the hearing considering the valuation of the entire estate and the board received no testimony or documentation concerning the market value of the non-appealed property. Contrary to Mr. Gordon's assertion in the rehearing motion, the board did consider the assessment on the other property owned by the Taxpayers, but was given no evidence of its market or aggregate value. The evidence presented at the hearing regarding the valuation of the non-appealed property was limited to its purchase price. There

was no appraisal, and no comparable sales were presented at the hearing relative to the non-appealed property. The board also notes the rehearing motion fails to explain why the Taxpayers and their representative did not present all the information they now want to submit at the original hearing. The board's rules state, in TAX 201.37(f), parties shall submit all evidence and present all arguments at the hearing; therefore, rehearing motions shall not be granted to consider evidence previously available to the moving party, but not presented at the original hearing, or to consider new arguments that could have been raised at the hearing.

The board finds the decision addressed the relevant arguments in the Taxpayers' rehearing motion, and it is not necessary to re-examine them further. The remaining issues are without merit and require no further discussion. See Vogel v. Vogel, 137 N.H. 321, 322 (1993).

Pursuant to RSA 541:6, any appeal of this order by the Taxpayers to the Supreme Court must be filed within thirty (30) days of the date of this order.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing order has this date been mailed, postage prepaid, to R. William Gordon, Representative for Mark H. and Nancy O. Watson, Taxpayers; and Chairman, Board of Assessors of Laconia.

Date: September 22, 2000

Lynn M. Wheeler, Clerk