

Hinsdale Greyhound Racing Association, Inc.

v.

Town of Hinsdale

Docket No.: 18629-00PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2000 assessment on Map 19, Lot 15 \$332,800 (land \$40,000; buildings \$292,800), a 5.50-acre parcel with kennels. Prior to the hearing, the Taxpayer and the Town reached an agreement as to the assessments of the other nine parcels and improvements owned by the Taxpayer in town, and the Taxpayer withdrew its appeal on all but Map 19 Lot 15. The parties, at hearing, further stipulated that the land component of the assessment of Map 19, Lot 15 of \$40,000 is appropriate and, thus, the focus of the hearing would be solely on the improvements to that parcel. For the reasons stated below, the appeal for abatement is granted.

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 Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the kennels are of low-cost construction being prefab wood frame structures on a concrete slab with minimal drywall interior walls and ceiling finish;
- (2) the kennels have been used relatively hard and show extensive deferred maintenance;
- (3) the Taxpayer's appraisal prepared by Mr. Andrew Boggini ("Boggini Appraisal") estimated a replacement cost new of \$35 per square foot based on Marshall and Swift Valuation Service and discussions with the owner as to the kennels' low-cost construction;
- (4) the kennels should be depreciated by 63% for physical depreciation and an additional 10% functional and 10% external obsolescence due to the vagrancies of the racing industry and the special-purpose nature of the improvements; and
- (5) the resulting indicated market value by the cost approach of \$114,240 is significantly less than the Town's estimated market value of \$292,800.

The Town argued the assessment was proper because:

- (1) an appraisal prepared by Stephen G. Traub (Traub Appraisal) estimates by the cost approach the kennels have a market value of \$292,800; and
- (2) the estimated market value is based on a per-square-foot replacement cost new of \$45.39 depreciated 39% for physical depreciation and an additional 10% functional and 10% external obsolescence.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$186,950 (land \$40,000; improvements \$146,950).

First, the board must note that both the parties' appraisers arrived at an estimated market value on and around April 1, 2000. To arrive at assessed value, however, market value estimates always need to be adjusted by the general level of assessment of all other assessments in a taxing jurisdiction to be proportional. N.H. Const. Pt. 2, Art. 5. In this case, neither party submitted any evidence as to the level of assessment being different than the .88 ratio estimated by the department of revenue administration during its 2000 equalized valuation calculations. While the parties apparently settled on market value in the resolution of the other nine parcels, the board is not bound by such agreement for the remaining parcel before it. Consequently, to make any market value estimate proportional to other assessments in Town, the board rules the .88 equalization ratio must be applied to result in a proportional assessment. The balance of the board's findings will, therefore, deal with the market value of the kennels.

The Taxpayer's appraiser, Mr. Boggini, was present at the hearing and testified as to his observations of the quality of the kennels, their replacement cost and depreciation and his methodology in arriving at an estimated market value for the kennels. The Town's appraiser, Mr. Traub, was not present at the hearing and, as a consequence, the board can only rely upon the Traub Appraisal's written description of the nature of the kennels, his cost approach calculations and resulting market value estimate for that portion of the Property. While both appraisals contained small black and white copies of photographs of the kennels, the Taxpayer's prehearing statement did include a number of good, detailed, colored photographs of the kennels which were helpful to the board during its deliberations.

Based on the testimony and evidence, the board finds that the kennels should be classified as low-cost construction as opposed to average-quality construction as the Traub Appraisal had done. Mr. Boggini's description of the type of construction and finish, both appraisals' descriptions and the Taxpayer's prehearing statement's photographs support that these structures are simple, prefab-frame structures with plywood texture 1-11 siding and minimal interior finish with heating and air conditioning. Further, the board notes that the Marshall and Swift Valuation Service's rating of average allows for grooming and office areas more typical to commercial boarding kennels as opposed to what one would likely find at race track kennels. Thus, the board concludes that the low-cost quality rating is more appropriate than average. While not dismissing Mr. Boggini's \$35 per-square-foot replacement cost new price, the board has calculated (summarized below) a replacement cost based on the Marshall and Swift Valuation Service similar to that contained in the Traub Appraisal (except for the low cost rating and no sprinkler addition).

low-cost kennel	\$38.86
cooling and heating	<u>.60</u>
subtotal	\$39.46
area perimeter multiplier	<u>.873</u>
refined square foot cost	\$34.45
4/00 cost multiplier	.975
local multiplier	<u>.94</u>
final square foot cost	\$31.57

The board notes that this final replacement cost price as a low-cost structure (and excluding any sprinkler additional cost) is similar to Mr. Boggini's estimate at \$35.00 per square foot.

The board's review of the photographs confirms Mr. Boggini's description that the kennels have been used hard and have had minimal maintenance. Notwithstanding the

significant depreciated nature of the buildings, however, the board concludes that the Boggini Appraisal's physical depreciation of 63% is excessive. Conversely, the board finds the Traub Appraisal's physical depreciation of .39 does not adequately recognize the condition of the kennels. The board has estimated a 50% physical depreciation based on its experience and expertise.¹

Both the Boggini Appraisal and the Traub Appraisal have 10% additional depreciation for functional and external obsolescence due to the nature of the improvements as a component of the racing/betting industry. The board finds that such additional depreciation is appropriate and is reasonably explained in both appraisals.

The board, however, disagrees with the Boggini Appraisal methodology of adding the additional 20% depreciation to the 63% physical depreciation calculation. The more conventional methodology is a chain multiplication (as done in the Traub Appraisal), especially when one is dealing with such a large amount of depreciation.

Therefore, the board concludes the proper calculation is to depreciate the \$31.57 by 50% physical depreciation, 10% functional and 10% economic as ($\$31.57 \times .5 \times .9 \times .9 =$ depreciated cost per square foot of \$12.79). Multiplying the depreciated cost per square foot of 12.79 by the total square footage (13,056) of kennel area arrives at an indicated market value of \$166,986 which then adjusted by the Town's 2000 equalization ratio of .88 produces an indicated assessed value for the improvements of \$146,950.

¹ The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33 VI; Appeal of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

If the taxes have been paid, the amount paid on the value in excess of \$186,950 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 2001 and 2002. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Michael P. Bentley, Esq., Lane & Bentley, P.C., 106 Washington Street, Keene, New Hampshire 03431, counsel for the Taxpayer; and Chairman, Board of Selectmen, Town of Hinsdale, Post Office Box 13, Hinsdale, New Hampshire 03451.

Date: July 23, 2003

Anne M. Bourque, Deputy Clerk

0006