

Robert E. Earley

v.

City of Nashua

Docket No.: 18676-00PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2000 assessment of \$400,400 (land \$81,300; buildings \$319,100) on .26-acre lot with an office building (the “Property”). For the reasons stated below, the appeal for 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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the building is a 19th-century, 2½-story dwelling with an attached barn renovated and converted to office space in 1957; additional renovations to the barn were made in 1985;
- (2) the land consists of two separate lots: Lot 20 which contains the building and Lot 63 which

is triangular in shape limiting its use to parking and, thus, has minimal contributory value to the entire property;

(3) the Property is in an inferior neighborhood, is several blocks away from Main Street and just west of an industrial zone;

(4) the City used unadjusted base rates and different depreciation for the Property compared to neighborhood law-office buildings (within 100 yards of the Property), older law-office properties built during the same time-frame and nearby office buildings; and

(5) the Property's April 2000 market value was approximately \$300,000.

The Town argued the assessment was proper because:

(1) a direct sales comparison approach utilizing four comparable sales indicates a market value of \$451,000;

(2) a value estimate by the income approach is not indicative of the Property's market value because this type of property is purchased to be owner-occupied, not for its income stream;

(3) the relationship between the "actual age built" and the "effective year" of a property is a measure of the condition (renovations and maintenance) of a property;

(4) a 20% adjustment was applied to the land value of both lots (assessed as one) to reflect its triangular shape; the Property has parking on-site for at least five cars and has good on-street parking on both Temple and East Pearl Streets;

(5) the one sale utilized by the Taxpayer (54 Temple Street) is not comparable to the Property as it shares a common wall with the abutting property, is a small lot, has no parking and little curb

appeal; and

(6) the Property is assessed similarly to comparables in the City.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed. The Taxpayer's arguments centered around analyses of properties with similar usage in the neighborhood. However, on balance, the board finds most of the properties the Taxpayer submitted as comparables are, to a large extent, so different as to not be good comparables. As a consequence, the Taxpayer's analysis in which he averaged the indicated assessed per-square-foot values of these "comparables" does not result in proportionate assessment.

Specifically, some of the comparables are smaller, of inferior quality and do not contain the level of renovations for office use as the Property (e.g. 54 Temple Street). Further, other than the sale of 54 Temple Street (which is not comparable due to its small size, lack of on-site parking, quality of construction and overall condition), the Taxpayer submitted no sales evidence to support his contention of a \$300,000 assessment. The Taxpayer's analysis is simply an averaging of office assessments on a per-square-foot basis which is not a conclusive method of establishing market value since it was based on a comparison of assessed values versus sale prices and, moreover, averaging ignores the unique characteristics of properties. Averaging, as done by the Taxpayer, is not a conclusive method of establishing market value since averaging ignores the unique characteristics of properties. Rather, analyzing, comparing, and weighing sales data and then correlating the most pertinent aspects of the sales to the subject Property arrives at the best indication of market value.

The board finds the sales analysis submitted by the City reasonably estimates the Property's market value. We note, as the Taxpayer pointed out, two of the comparables are brick office buildings and certainly are less than ideal comparable sales to be utilized in estimating the Property's market value; nonetheless, giving most weight to the first two sales (which are more comparable), the board finds the sales analysis supports the assessment.

While the Taxpayer did present evidence of a varied or transitioning neighborhood, the photographs and testimony of the Property also indicate it is a well-maintained office conversion with adequate on-site and on-street parking and excellent visibility from Temple and East Pearl Streets. The board finds these positive factors need to be accounted for in any valuation analysis. As noted, the Taxpayer's averaging of the assessed values of neighborhood properties does not appropriately address the Property's positive attributes.

The board finds the City properly assessed the two separate lots as one economic unit given their combined utility as office space and associated parking. The City's 20% adjustment for the entire parcel's shape is appropriate. A review of the photographs of the Property indicates that, while the apex of the parcel may have little or no practical utility, it does create great visibility for the improved portion of the Property. Additionally, because the Property is bounded by two streets, it has good accessibility and on-street parking opportunities. Thus, we find no further adjustment to the lot value is necessary.

The board agrees with the City that an income approach valuation of the Property does not result in a good indication of its value. As the City testified, the sub-market for such office space is generally dominated by the owner occupying a portion of the space with the balance leased out. The primary market motivation for owner occupancy is not investment return or

income stream potential. Thus, we give no weight to either parties' income approach valuation estimates.

Findings of Fact and Rulings of Law

With respect to the Taxpayer's Requests for Findings of Fact ("Requests"), in these responses, "neither granted nor denied" generally means one of the following:

- a. The Request contained multiple requests for which a consistent response could not be given;
- b. The Request contained words, especially adjectives or adverbs, that made the Request so broad or specific that the Request could not be granted or denied;
- c. The Request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. The Request was irrelevant; or
- e. The Request is specifically addressed in the decision.

The Requests are replicated in the form submitted without any changes, typographical or otherwise, made by the board.

1. "The Property is situated in an Urban Residential Zoning District which is bounded on the East by a General Industrial District extending to Hudson, New Hampshire and on the West by a Central Business District which includes downtown Nashua." **Granted.**

2. "The Property is situated at the origin of East Pearl Street as the first property on the North side of the street at a point furthest from the business district of downtown Nashua and

closest to the industrial district.” **Neither granted nor denied.**

3. “The three office buildings situated closest to the property at the origin of East Pearl Street are located at 4½ East Pearl Street, 8 East Pearl Street and 88 Temple Street.” **Granted.**

4. “The Property is a converted 2½ story wood dwelling with attached barn utilized as an office building.” **Granted.**

5. “The property, built in 1880 is the oldest office building in the neighborhood.”

Granted, based on the evidence submitted.

6. “The last renovation to the property occurred in 1985 when the barn was remodeled.”

Granted.

7. “The unimproved easterly third of the property described as Lot 63 on Assessors Map 34Q is an unbuildable lot because of its narrow width and irregular configuration.” **Granted.**

8. “The unbuildable land area identified as Lot 63 is excess land which has only minimal value for limited on-site parking.” **Denied.**

9. “According to the City Property Record Card, a wood frame dwelling converted to office space and located directly across the street from the subject property at 10 E Pearl Street has an “unadjusted base rate” of only .70 as compared to a .90 rate for the subject property despite its similarity to the subject property as a converted dwelling.” **Neither granted nor denied.**

10. “According to the City Property Record and a wood frame dwelling at 54 Temple Street which was converted to office space and located within 100 yards of the subject property, has an unadjusted base rate of only .66 as compared to the subject property despite its similarity to the subject property as a converted dwelling.” **Neither granted not denied.**

11. “The sales assessment analysis for “All Office Building Sales” and “Small Office Building Sales” and “Neighborhood Assessment Analysis”, contained in “Summary Appraisal” submitted in evidence by the city, produces office building appraisals based on Market Data from which a consideration of the assessment and sale of 54 Temple Street in the year 2000 is excluded on the theory that 54 Temple Street is a ‘Two family property.’” **Neither granted nor denied.**

12. “According to the city’s summary appraisal, the property at 54 Temple Street was sold on February 3, 2000 at a price of \$43.94/square foot as compared to \$71.51 per square foot for the subject property.” **Granted.**

13. “According to the City Property Record Card, three of four law office buildings closest to the subject property at 65, 63 and 54 Temple Street have accrued depreciation exceeding that of the subject property, even through the subject property is thirty years older than the average age of the other three properties.” **Granted.**

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

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Robert E. Earley, 9 East Pearl Street, Nashua, New Hampshire, 03060, Taxpayer; David R. Connell, Esq., Nashua Office of Corporate Counsel, 229 Main Street, Post Office Box 2019, Nashua, New Hampshire, 03061; and Chairman, Board of Assessors, City of Nashua, Post Office Box 2019, Nashua, New Hampshire, 03060.

Date: March 10, 2003

Anne M. Bourque, Deputy Clerk