

Richard F. and Mary Jane Dietz

v.

City of Claremont

Docket No.: 20312-03PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “City’s” 2003 assessment of \$210,400 (land \$35,600; buildings \$174,800) on Map 15, Lot 17, consisting of 17.5 acres and improved with a dwelling, a horse stable with living quarters, several sheds and a garage slab (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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 Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

- (1) the improvements are not accurately listed on the assessment-record card;
- (2) after a physical inspection by the City’s assistant assessor in December 2003, the assessment dropped to \$183,600 for 2004 and 2005, but not for 2003;

(3) the City did not need to inspect the interior of the living quarters above the stable because the Taxpayers were not contesting the description of that area; and

(4) the City acted in bad faith in not revising the 2003 assessment to the \$183,600 value found for subsequent years.

The City argued the assessment was proper because:

(1) the Taxpayers denied the City the opportunity to inspect the interior of the stable with living quarters and thus the City did not grant the lower assessment for 2003; and

(2) because of this denial, the Taxpayers' appeal should be dismissed under RSA 74:17,II.

At the close of the March 28, 2006 hearing, the board ruled from the bench that, to arrive at the proper assessment, the City needs to take a proper inventory of the living area above the stables and correct any buildings which may still have incorrect dimensions. Consequently, with the parties' agreement and in lieu of the RSA 74:17,II dismissal (requested by the City for the first time at the hearing), the board ordered the City to inspect parts of the Property, in the presence of the board's review appraiser, and submit a revised assessment-record card, as provided in the board's March 31, 2006 Order. On April 24, 2006 the City submitted a revised assessment-record card, correcting the dimensions on two sheds and the stable canopy and changing the quality grading of the living space above the stable, resulting in a revised assessment of \$210,500. On May 4, 2006 the Taxpayers submitted "Appellant's Reply", a "Motion for Definitive Adjustment", "Appellant's Memorandum in Support of Reply", "Objection" to the revised assessment-record card and "Appellant's Memorandum in Support of Objection."

Board's Rulings

For the reasons stated below, the board finds the proper assessment for 2003 to be \$197,300.

For a relatively straightforward assessment, this appeal has consumed an inordinate amount of the parties' and board's time and resources. The very reason the board proposed and obtained agreement of the parties at the March 28, 2006 hearing was to resolve the disagreement between the parties as to the need to inspect the living area above the stables and check the measurements of two sheds. This resolution proposed by the board and accepted by the parties was a balancing of the Taxpayers' unreasonable and untenable position of refusing access to the living area above the stables with the City's unreasonable and questionable decision to lower the assessment in 2004 and 2005 based on a partial re-inspection of the Property, but not for 2003 due to refusal of access to all areas of the Property. Thus, to move the case along and provide a more equitable solution, the board obtained concurrence of the parties to have the City inspect those areas in the presence of the board's review appraiser and file a revised assessment-record card for tax year 2003.

Based on the following findings, the board denies the Taxpayers' Motion for Definitive Adjustment but does order an abatement to \$197,300, based on the following components and the findings detailed below:

Land	\$35,600
Primary dwelling (on card 1 of 2)	\$67,000
Outbuildings, including 2 sheds and garage (on card 1 of 2)	\$9,700
Stable with living quarters (on card 2 of 2)	\$85,000

The City's April 24, 2006 revised assessment-record card increased the value for the primary dwelling (on card 1 of 2), from \$67,000 to \$67,900 without any change in dimensions, grade or depreciation. The City's adjusted base rate on the revised assessment-record card is slightly different than what it was on the original assessment-record card. The board can only presume this is related to revisions to the assessment models for subsequent years and is not reflective of the 2003 year; thus the board finds the best evidence of the assessed value for the primary dwelling is contained on the earlier assessment-record card at \$67,000. By the same reasoning, the board finds the prior land assessment (\$35,600 rather than \$35,400) should be applied.

The board finds the City's revised assessments for the sheds (based on the corrected dimensions) are a reasonable estimate of their contributory value. The City, however, valued the garage as if complete at \$20,000 on its revised assessment-record card rather than just the slab it was on April 1, 2003. The board finds the City's prior assessment of \$7,500 for the slab should remain for the 2003 year. The Taxpayers' proposed value in their May 4, 2006 Reply appears to be based on a paving rather than a concrete slab value and thus is not appropriate for the slab in place on April 1, 2003.

The board finds the best estimate of assessed value for the stable with living quarters is reflected in the City's revised assessment-record card. Part of the purpose of having the City reinspect the Property was to gain interior access to the living quarters and ascertain whether its qualitative and quantitative listings were correct. The City, after interior inspection, increased the grade from a D to a C and revised the related calculations of the deck, canopy and stable area in keeping with the grade revision. The Taxpayers submitted no evidence that the average grading (grade C) for the living area over the stables was inappropriate, but only complained it

had changed and was a bad faith adjustment on the part of the City. The board does not find the City acted in bad faith for correcting its grade listing from a D to a C because the purpose of obtaining the parties' agreement for re-inspecting the Property was to improve the quality of the City's inventory of the Property and result in a proportionate assessment and the board could have granted a dismissal of the appeal due to the Taxpayers denying access.

If the taxes have been paid, the amount paid on the value in excess of \$197,300 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Because the City assessed the Property at a lower level for 2004 and 2005, the board's revised assessment of \$197,300 is applicable only to the 2003 tax year. Cf. RSA 76:17-c and LSP Assoc. v. Town of Gilford, 142 N.H. 369, 373-74 (1997).

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(f). 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

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Richard F. and Mary Jane Dietz, 27 Holly Hill Road, Claremont, NH 03743; Jane F. Taylor, Esq., City Solicitor, 58 Opera House Square, Claremont, NH 03743, Municipality Representative; and Guy Santagate, City Manager, City of Claremont, 58 Opera House Square, Claremont, NH 03743.

Date: June 14, 2006

Anne M. Stelmach, Clerk