

Henry P. and Jeanne G. Braen

v.

Town of Mont Vernon

Docket No.: 20883-04PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2004 assessment of \$287,800 (land \$114,770; buildings \$173,030) on Map 7/Lot 60-12, a single-family home on a 2.59-acre lot (the “Property”). 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, 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. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) an appraisal prepared by Richard D. Rockwood (the “Appraisal”) indicated the market value of the Property to be \$270,000 as of April 1, 2004;

- (2) the assessed value of the land is excessive and is not supported by the market;
- (3) the land has steep topography to the rear, lacks privacy and has wetlands resulting in the lot having approximately one acre of useable area; and
- (4) the Town's revaluation has resulted in the Property being disproportionately assessed.

The Town argued the assessment was proper because:

- (1) the Appraisal has some flaws and discrepancies (age and condition not accounted for) which, if corrected, supports the assessed value of the Property;
- (2) the land value is supported by sales and the lot's topography is not atypical in the Town; and
- (3) the evidence presented at the hearing has shown the assessment is equitable and proportional and no abatement is warranted.

Board's Rulings

Based on the evidence and testimony, the board finds the Taxpayers failed to prove the Property was disproportionately assessed.

Assessments must be based on market value. See RSA 75:1. The Taxpayers submitted the Appraisal, which estimated the Property's market value on April 1, 2004 to be \$270,000, as evidence the Property is overassessed. The board finds the Appraisal, with some appropriate adjustments, gives a market value estimate that approximates the Property's assessment.

During the hearing, Mr. Rockwood acknowledged some adjustments to the Appraisal were warranted. A positive \$4,000 adjustment should have been made to comparable sale no. 3 on the sales comparison analysis grid in the Appraisal to reflect the fact this comparable sale did not have a two car garage, an attribute of the Property.

Further, the Town testified an adjustment to the Appraisal should be made to comparable sales no. 2 and 3 to account for their older effective ages and their higher amount of accrued

physical depreciation compared to the Property. The Town suggested a positive \$2,000 adjustment for comparable sale no. 2 and a positive \$9,000 adjustment for comparable sale no. 3 under the age/condition heading to adjust for these factors. Mr. Hatfield, the Town's contract assessor, testified he had inspected, during the revaluation, the interior of the Property as well as the interiors of each of the comparable sales used by Mr. Rockwood. Mr. Rockwood testified he did not inspect the interiors of any of the comparable sales he used. Mr. Hatfield's thorough knowledge of the Property and the comparable sales lends credence to his suggestion that some adjustment for additional depreciation due to the age/condition of some of the comparable sales was warranted and his suggestions to comparable sales 2 and 3 were incorporated into the board's decision.

The board received a substantial amount of testimony from the Taxpayers and Mr. Rockwood asserting that while the Property contained 2.59 acres only one acre of the site was useable due to steep topography and wetlands. Although the lot may not be level, the board noted Mr. Rockwood made no adjustments to his comparable sales in the Appraisal for any differences in useable area when compared to the Property. Mr. Rockwood testified he was unable to see any topographical problems on any of the comparable sales when he viewed them from his car and he did not discuss the sales' topography when he confirmed them with the real estate brokers involved. If the Property only had one acre of useable land, some adjustment would have been appropriate to each of the comparable sales to reflect their superior topography. Further, Mr. Rockwood used an \$80,000 site value in his cost approach although the sales he listed in the Appraisal indicated a higher value. He did testify, however, the cost approach was not weighted as heavily as the sales comparison approach when he reconciled the Property's market value using the two approaches.

There was a substantial amount of testimony from both parties regarding how the Appraisal's comparable sales should be weighted. Because some of the testimony conflicted with what was written in the Appraisal, the board weighted the estimates of value from the comparable sales equally. Making these adjustments and weighting all the comparable sales equally yields an indicated market value for the Property of \$284,100.

During the hearing, the Town testified all sale properties used in the revaluation were adjusted three quarters of a percent (0.75%) per month during this time period for market conditions (time). The board has not made such an adjustment for market conditions to the comparable sales but a cursory review indicates the adjustment would only cause the Appraisal's market value estimate to move even closer to the Town's \$287,800 assessed value.

Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). The courts have held that in measuring tax burden, market value is the proper yardstick to determine proportionality. The board finds the revised estimate of market value determined using the Appraisal, performed for the Taxpayers, with some adjustments coupled with the Town's general level of assessment after the 2004 revaluation of 100% supports the Property's assessment.

The Taxpayers testified the Property's 89.9% increase in assessment, as a result of the revaluation, compared to the Town-wide average increase of 59.3% is evidence the Property is being disproportionately assessed. Increases from past assessments are not evidence that a taxpayer's property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Town of Sunapee, 126 N.H. 214 (1985). A greater percentage increase in an assessment following a municipal reassessment or update is not a basis for an abatement since unequal percentage increases are inevitable following such

reassessments. RSA 75:8 requires municipalities to examine all real estate in the municipality on an annual basis and reappraise such real estate as has changed in value. The Town's update complies with RSA 75:8 and is intended to remedy past inequities and, thus, the new assessments will vary between properties, both in absolute numbers and in percentages.

As further evidence the Property was disproportionately assessed, the Taxpayers testified there were several more substantial properties in the neighborhood with lower, disproportionate assessments. The board finds the Property was not overassessed. However, there was testimony indicating certain surrounding properties may have been underassessed. The underassessment of other properties does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987).

The board would further note a review of the assessment-record cards of the three comparable sales used in the Appraisal indicates sales 1 and 2 had selling prices close to their assessed values. A review of the total net and gross adjustments applied to each of the comparable sales are well within USPAP guidelines and are some evidence the sales selected by Mr. Rockwood were indeed good comparables.

For all these reasons the board finds the Taxpayers failed to prove the Property was disproportionately assessed and the appeal is denied.

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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

CERTIFICATION

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Henry P. and Jeanne G. Braen, 14 Levesque Lane, Mont Vernon, NH 03057, Taxpayers; and Chairman, Board of Selectmen, Town of Mont Vernon, PO Box 444, Mont Vernon, NH 03057.

Date: February 22, 2007

Anne M. Stelmach, Clerk