

Jean E. Chouinard

v.

Town of Allenstown

Docket Nos.: 20928-04PT and 21570-05PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2004 and 2005 assessments of \$198,200 (land \$55,500; buildings \$142,700) on Map 110, Lot 037, a residential, two-unit dwelling on 0.15 acres (the “Property”). For the reasons stated below, the appeals for abatement are denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments were 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 assessments were higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessments were excessive because:

(1) the Property is a small, non-conforming lot of approximately one-sixth of an acre and part of the house is only four feet from Sargent Street;

- (2) the house has rotting sills, outdated electrical wiring, a foundation supported by braces and other adverse conditions that make the house's condition "fair" rather than "average";
- (3) the house has less area (1,987 square feet) than indicated on the Town's assessment-record card (2,278 square feet) and only 1¾ baths, not 2 baths;
- (4) if the house "burned down," it could not be rebuilt because the lot is a non-conforming lot and the foundation is below grade;
- (5) a "certified" appraisal by Strachan-Murphy (the "Appraisal," in Taxpayer Exhibits No. 2 and 3) estimates a \$169,000 value for the Property, which is valid, especially when two other estimates of value are below this amount; and
- (6) the assessments should be abated to the appraised value adjusted by the Town's level of assessment in each tax year (\$160,550 and \$149,565).

The Town argued the assessment was proper because:

- (1) while the Property may not be "pristine," it has positive features and amenities as well as the negative elements mentioned by the Taxpayer;
- (2) contrary to the Taxpayer's belief, the house could be rebuilt if it is destroyed because the right to rebuild would apply to the building's footprint;
- (3) the Town correctly listed the number of baths because three fixtures (sink, toilet and shower or bathtub) make a "full" bath;
- (4) the Town did an update in 2004, as it had in prior years, to account for changing market values;
- (5) between 2004 and 2005, the median ratio fell (from 95% to 88.5%), indicating market values in the Town were increasing in this period;

(6) the Town investigated the properties in the Appraisal and found comparable #2 (107 Glass Street) was in “unlivable [and] uninsurable” condition when it was sold, comparable #3 (22-24 Cross Street) was an “estate sale” below market value (because the owner was going into a nursing home) and this sale was excluded from the Town’s reporting to the department of revenue administration and comparable #1 (79-81 Glass Street) was in “poor condition” when it was sold and thus the appraiser’s description that the comparable sales were in “similar” or “superior” condition is not accurate;

(7) the Town did its own market value analysis (Municipality Exhibit No. A), including a direct sales comparison approach to value using three comparable properties on the same street (Turnpike) and one on another (Main) in the same vicinity; and

(8) the Town abated the original assessment by increasing the depreciation and making a “location” adjustment (for the four foot distance from Sargent Road).

The parties agreed the levels of assessment in the Town were 95% in tax year 2004 and 88.5% in tax year 2005.

The Taxpayer filed appeals for tax years 2004 and 2005. In a July 10, 2006 order the board notified the parties that if there were no objections, the two appeals would be consolidated for hearing. The board received no objections from either party and held a consolidated hearing. The assessments for each year were the same and therefore the board issues this consolidated decision for the two appeals as the issues were the same in each case.

Board’s Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed.

Assessments must be based on market value. See RSA 75:1. The Taxpayer provided the Appraisal that estimated the Property's market value at \$169,000 on April 2, 2004. Ordinarily, the board would give due weight to an appraisal performed by a professional appraiser that was found to be factually correct and utilized sound appraisal methodology, especially if the appraiser appears as a witness to testify at the hearing to explain and defend the value conclusion. In this case, however, the appraiser did not attend the hearing and the Appraisal had several significant flaws. Notably, two of the comparable sales (#2 and #3) were not accurately described by the appraiser on the direct sales comparison approach portion of the Appraisal.

For example, comparable sale #2, located at 107 Glass Street in Pembroke, an abutting town, was listed as being in "similar" condition to the Property. At hearing, the Town testified it spoke with the grantee of that sale and found at the time of the sale the house was essentially in an "unlivable" condition due to its state of disrepair and the Town of Pembroke would not allow the new owners to move in until some of the repairs were completed. There were ceilings that were caving in due to a leaking roof, a very old kitchen that had not been updated for at least 50 years, several windows needed replacement, and other issues that caused this comparable sale to be in significantly worse condition than the Property.

Further, comparable sale #3 in the Appraisal (at 22-24 Cross Street in Allenstown) was listed by the appraiser as an arm's-length transaction; however, the Town stated it should not be considered a valid sale as the owner of that property, due to poor health, had been moved to a nursing home requiring the heirs to liquidate the property. The Town also stated the New Hampshire Department of Revenue Administration ("DRA") did not consider comparable sale #3 a qualified sale given the nature of the transaction and the motivation of the sellers.

Additionally, the Town stated comparable sale #1 was in fair to poor condition, but livable, and

it was incorrect for the appraiser to assign a “superior” condition factor to this sale in the Appraisal as it was more similar in condition to the Property. The Town stated the facts listed by the appraiser are inaccurate and do not support the assumptions and condition adjustments made by the appraiser. While the board concurs with the appraiser’s conclusion that under ordinary circumstances the market approach would provide the best indication of the Property’s value, the market approach in the Appraisal can be given little weight for the previously stated reasons.

The Taxpayer provided two other estimates of the Property’s market value, one by a realtor and one performed by the Taxpayer himself. Both of these estimates were lower than the estimate contained in the Appraisal. The Taxpayer admitted these estimates were not “certified” appraisals and in this appeal he was placing the most weight in the estimate of value contained in the Appraisal.

The Taxpayer presented photographs (Taxpayer Exhibit No. 1) and listed several physical conditions that may have an impact on the Property’s market value, including: the dwelling’s close proximity to Sargent Street; the fact the sills for portions of the house sit right on the ground and in some instances are below grade; the limited crawl space under a portion of the dwelling; the outdated electrical wiring in the walls; the Property’s small, non-conforming lot; and the fact that if the Property burned down it could not be rebuilt due to the non-conforming lot and the condition of the foundation. The board finds that while all these factors may influence the Property’s value, the Taxpayer provided no evidence to quantify the impact of these conditions in a manner sufficient to establish overassessment.

The board also considered the evidence presented by the Town to support the assessment. The detailed analysis of comparable properties contained in Municipality Exhibit No. A further supports the conclusion the Property is not entitled to an abatement for either tax year.

For all these reasons, the board finds the Taxpayer has not carried his burden of proof to prove the Property was disproportionately assessed and the appeals are therefore 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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Jean E. Chouinard, 60 Turnpike Street, Allenstown, NH 03275, Taxpayer; and the Town of Allenstown, Chairman, Board of Selectmen, 16 School Street, Allenstown, NH 03275.

Date: October 27, 2006

Anne M. Stelmach, Clerk