

Kerr Family Trust

v.

Town of Sugar Hill

Docket No.: 21043-04PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2004 assessment of \$212,700 (land \$86,000; building \$126,700) on Map 214/Lot 22, a single-family property on 0.560 acres at 1150 Main Street (Route 117) (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 Taxpayers request for leave not to attend the hearing was granted by the board in accordance with its rules. See Tax 202.06. In the appeal document, the Taxpayer argued the assessment was excessive because:

- (1) the assessment does not take into account the shape and location of the Property or its nonconforming status, which limits development to a two-bedroom house;
- (2) the highest offer for the land (after the building was destroyed by a fire) was \$20,000; and
- (3) the market value of the land was no more than \$40,500 as of the assessment date.

The Town, represented by its assessor, Steve Allen of Brett S. Purvis & Associates, argued the assessment was proper because:

- (1) the land value of \$86,000 was determined using consistent methodology based on the Town's land valuation model;
- (2) the Taxpayer has not presented any evidence to contest the value of the building constructed after the fire and before the assessment date (April 1, 2004); and
- (3) the Taxpayer failed to meet its burden of proving disproportional assessment.

Board's Rulings

The board finds the Taxpayer failed to prove the Property was disproportionately assessed. The appeal is therefore denied.

Assessments must be based on market value. See RSA 75:1. In order to obtain an abatement, a taxpayer must prove that his or her "property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the town." Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). In making findings on market value, the board must look at a property's value as a whole because this is how the market values property; in other words, the board must consider a taxpayer's entire estate (i.e., land and building together) to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

In this appeal, the Taxpayer failed to present any credible evidence to establish the market value of the Property as a whole. The evidence shows a new building was constructed after a fire, but the Taxpayer presented no evidence to contest the assessed value of the Property as a whole, the lot and new dwelling.

As to the land, the Taxpayer emphasized a verbal offer of \$20,000 to purchase the land after the fire demolished the building, but the Taxpayer did not accept this offer and there is no evidence the Property was actively marketed either before or after the building was constructed. Thus, the board can give no weight to the verbal offer allegedly received by the Taxpayer. The appeal document also attaches an advertisement published on 12/29/04 in a local paper for land offered at \$49,975, but no information was given regarding its location or comparability to the Property. The board also finds the attempted comparison to other lots in the appeal document (based on per square foot calculations) to be incomplete and unpersuasive. There is not necessarily a straight line relationship between the size of a lot and its market value. Location and other property rights may differ from lot to lot and these other differences may have a more important impact on market value than simply a per square foot calculation and comparison.

The Town, for its part, presented evidence explaining how land values were assessed in the Town, based on neighborhoods and other factors, and how a sliding scale was applied to lots of different sizes. In addition, the Town explained why the shape of the lot did not adversely affect the value of the Property. The board reviewed a sketch of the Property and noted its irregular 'L shape', with additional frontage on Main Street (Route 117) due to this shape. The board cannot find this characteristic adversely affected the value of the Property.

For all of these reasons, 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

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. Kerr, 345 Washington St., Braintree, MA 02184, Taxpayer Representative; and Chairman, Board of Selectmen, Town of Sugar Hill, PO Box 574, Sugar Hill, NH 03585.

Date: August 31, 2007

Anne M. Stelmach, Clerk