

**Patrick R. Brady**

**v.**

**City of Dover**

**Docket Nos.: 21076-04PT/21944-05PT/22914-06PT**

**ORDER MODIFYING DECISION**

The board has reviewed the “City’s” timely Motion for Rehearing (“Motion”) of the January 11, 2008 Decision granting the “Taxpayer” abatements for tax years 2004, 2005 and 2006 on Parcel N-2-4, as well as the Taxpayer’s “Objection.” The Motion is granted in part. The Motion questions several aspects of the Decision and each will be addressed below.

One question raised by the Motion pertains to the Taxpayer’s “burden of proof” and whether the board could disagree with certain of the “valuation theories espoused” by the Taxpayer’s representative and still grant an abatement. The board does not accept the City’s argument that such findings are somehow inconsistent with each other. In seeking an abatement, a taxpayer is not constrained to present only one line of evidence or only one theory for estimating the value of his or her property. To the contrary, a taxpayer can employ various types of evidence and theories and even rely on evidence presented by the municipality itself in order to meet its burden of proving an assessment is disproportional and should be abated. Here, the Taxpayer’s representative (David Irwin) collected and presented considerable market and assessment data, see Taxpayer Exhibit No. 1, and also used the data to support a valuation theory

where both land not in current use (“NICU”) and land in current use (“CU”) are owned. While not accepting this theory as the basis for granting the appeal, the board found the evidence presented, considered as a whole, supported abatements on the land NICU based on a finding of disproportionality.

In the Decision, the board found the Taxpayer had met the requisite burden of proof (on Parcel N-2-4, but not on Parcel N-3-1) and finds no reason to alter this conclusion. See, generally, Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (“In arriving at findings of fact that . . . are within the parameters of the conflicting evidence submitted, the board merely employs its statutorily countenanced ability to utilize its ‘experience, technical competence and specialized knowledge’ in evaluating the evidence before it. See RSA 541-A:18, V(b).”); see also RSA 71-B:1.

Another question regards the City’s assertion that “the porch was completed and assessed in 2003,” even if, as the Taxpayer testified, the separate (11 x 16) addition had not been started or completed as of the April 1, 2004 assessment date. Upon review, the board agrees the \$2,200 value of the porch should be included. The City appears to concede the value of the addition (\$14,000) should not be included because it was not yet constructed, as found by the board in the Decision (at p. 7). The City further notes a half-bath (\$2,540) also added to the tax year 2004 assessment should be removed because it was part of the addition which the board found was not constructed until after April 1, 2004. Finally, the City states the - 5% market adjustment (apparently applied because of the unfinished nature of the addition) should be removed. The board agrees. Giving effect to these adjustments, the building assessment for tax year 2004 is \$110,300 (rounded), as set forth in the Motion, and the Decision is modified accordingly and in this respect.

The board acknowledges, as suggested by the Taxpayer's representative (David Irwin) in the Objection, the changes now proposed by the City are relatively nominal in amount.

However, the board encourages each municipality to have and use accurate physical data whenever and wherever possible. The board, for its part, could not arrive at a more accurate assessment for tax year 2004 until receiving and reviewing the information provided in the Motion, which the Taxpayer does not dispute.

In summary, the abatement for the tax year 2004 assessment on Parcel N-2-4 is modified to \$396,170 (\$283,500 land NICU and \$110,300 buildings, plus \$2,370 CU, undisputed). The abatements for tax years 2005 and 2006 on this parcel are not affected by this Order and neither is the denial of abatements on Parcel N-3-1.

Any appeal of the Decision, as modified by this Order, must be by petition to the supreme court filed within 30 days of the Clerk's date shown below. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Order Modifying Decision has this date been mailed, postage prepaid, to: David Irwin, Tax Choice Services, PO Box 1297, Hillsboro, NH 03244, Taxpayer Representative; and Chairman, City Council, City of Dover, 288 Central Avenue, Dover, NH 03820.

Date: 3/6/08

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Anne M. Stelmach, Clerk