

Union Congregational Church

v.

Town of Peterborough

Docket No.: 21189-04PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2004 assessments of: \$256,000 (land \$38,000, building \$218,000) at 31 Concord Street, Map U017/Lot 158, a three-family property on 0.34 acres; and \$217,300 (land \$39,600; building \$177,700) at 37 Concord Street, Map U017/Lot 155, a two-family property on 0.23 acres (collectively, the “Appealed Properties”). The Taxpayer also owns an adjacent parcel at 33 Concord Street, MapU017/Lot 157, a church on a 2.48 acre parcel, and 47 Pine Street (Map U018/Lot 026), a parsonage on a 2.43 acre parcel, which were not appealed because they are fully exempt pursuant to RSA 72:23, III. 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 Taxpayer argued the assessment was excessive because:

- (1) 37 Concord Street was bequeathed by a church parishioner in 1959 and 31 Concord Street was purchased in the 1970's;
- (2) 37 and 31 Concord Street are on each side of the church owned by the Taxpayer and need to use church parking to accommodate the tenants of the Appealed Properties;
- (3) the Appealed Properties are both encumbered with rights of way for accessing either the church or neighboring properties; and
- (4) the Appealed Properties are assessed at a higher price per square foot or per unit than other multi-family properties.

In its appeal document and to some extent during the hearing, the Taxpayer argued that because the Appealed Properties are rented to "lower-income households, and the rent charged is far below market rent ... the assessed values should reflect the reduced income the Church receives from the property due to the charitable nature of the renting program of the Church." (Appeal at Section F.) During the hearing, however, the parties agreed that, because there was no enforceable obligation for the Taxpayer to utilize the Appealed Properties in that fashion, the assessed value should not be influenced by the below market rent.

The Town argued the assessment was proper because:

- (1) the Town performed a revaluation in tax year 2004;
- (2) the abatements granted by the Town were based upon applying an additional 15% depreciation to the dwellings to reflect the combined effect of the parking and easement issues and no additional adjustment for parking is warranted because the Taxpayer owns the adjoining

church and parking and could ensure both had sufficient parking if the Appealed Properties were to be sold;

(3) the highest and best use of the Appealed Properties is as separate estates as two and three unit dwellings which have a higher market value on a per square foot or per unit basis than the larger apartment (five – nine unit) complexes submitted as comparables by the Taxpayer; and

(4) the market and financing opportunities for such properties are greater than for properties of four units or more which are more oriented towards investor ownership.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not carry its burden of showing the assessments as abated were disproportionate.

Assessments must be based on market value, RSA 75:1, and all factors relevant to property value should be considered in order to arrive at a just result. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). Market value is based on the concept of highest and best use. See, e.g., Steele v. Town of Allenstown, 124 N.H. 487, 490 (1984) (referencing as a definition that “use which will most likely produce the highest market value, greatest financial return, or the most profit”).

As noted above, the Taxpayer agreed the fact the Appealed Properties are rented at below market rents does not have a bearing on their market values because, while the Taxpayer stated it had a moral obligation to continue that use, there is no obligatory deed or other restrictions that would require such properties to be operated in that fashion.

The Taxpayer's remaining arguments largely focused on the Appealed Properties being assessed at a higher price on a per unit or per square foot basis than other multi-family properties. The comparables submitted by the Taxpayer are of apartments with four to eight

rental units per building with the living area ranging from 4,793 to 12,928 square feet (compared to the Appealed Properties' square footage of 4,101 and 2,512 for 31 and 37 Concord Street, respectively). The assessment-record cards for these comparables (Taxpayer Exhibit No. 1) indicate assessed values ranged from \$41,714 to \$62,900 per unit and \$36.55 to \$55.14 per square foot. The Taxpayer did not submit any sales of multi-family properties to support its argument of overassessment. However, two of the Taxpayer's comparable properties in Taxpayer Exhibit No. 1 sold in 2004 at indicated prices at or below the assessment ranges noted above. While these calculations are lower, the board finds they do not prove the Appealed Properties are overassessed, but rather demonstrate the Taxpayer's comparables are not similar to the Appealed Properties.

Mr. Corcoran, who represented the Town and performed the 2004 reassessment, testified that sales in Peterborough and similar markets indicate different market motivations, financing and participants exist for two and three unit properties versus larger rental complexes with four or more units, resulting in higher prices paid for two and three unit properties when compared either on a per unit or a per square foot basis. The three sales of two and three unit properties submitted in Municipality Exhibit No. A indicate sale prices ranged from \$108,225 to \$147,200 per unit and \$122.00 to \$160.29 per square foot. While comparable #1 needed to be identified more clearly and comparable #3 is admittedly a better quality property than the norm, the range of values indicated for two and three unit properties is significantly higher than for larger multi-family apartments.

The board finds this evidence is consistent with the board's general knowledge and experience that smaller multi-family properties have a different and broader market than larger apartment buildings which, coupled with the market phenomenon of economies of scale, result in

larger (both in total unit numbers and total building size) apartments selling for less than two to three unit properties. Thus, this differential in assessed values is not necessarily evidence the Taxpayer's properties are disproportionately assessed; rather it is reflective of the general market phenomenon for this different type of rental property.

Further, the Taxpayer argued the two parcels on which the Appealed Properties are located are so small that there is inadequate parking to support the tenant use. While this factor could negatively affect market value, the Taxpayer's exempt parking for the church adjacent to the Appealed Properties is utilized by the tenants. Thus, to the extent the Appealed Properties' value is affected by insufficient parking, it is mitigated by the common ownership of the church and the Appealed Properties. This common ownership would allow the Taxpayer to establish or re-establish lot lines for the Appealed Properties if they were ever to be marketed to ensure they have adequate parking.¹ Given the fact the church parking is exempt as part of the church parcel (RSA 72:23, III), any reduction in value that may occur on the Appealed Properties would likely be offset by having to reduce the exemption granted on the church parking area. Rather than trying to modify the existing exemption granted for the church property, the board finds the Town's abatement, which is a 15% economic depreciation to both buildings, reasonably recognizes both the parking issues and the driveway/right-of-way issues which encumber the Appealed Properties.

In short, the board finds the highest and best use of the Appealed Properties would be as the Town has assessed them as separate estates to be utilized as two or three family rental properties. Neither the below market rents charged by the church nor the fact that larger multi-

¹ During the hearing the parties noted the tax map depiction of the lots may not correspond with the deeds of the Appealed Properties. The board would encourage the parties, as Mr. Corcoran suggested, to research the deeds to straighten out any errors that may exist as to the actual parcel dimensions.

unit properties are assessed less than a per square foot or per unit basis form a basis for further abating the assessed value.

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: Mark D. Fernald, Esq., Fernald, Taft, Flaby and Little, P.A., PO Box 270, Peterborough, NH 03458, Taxpayer Representative; and Chairman, Board of Selectmen, Town of Peterborough, 1 Grove St., Peterborough, NH 03458.

Date: July 19, 2007

Anne M. Stelmach, Clerk