

Douglas P. and Christy W. Whitney

v.

Town of Peterborough

Docket No.: 21192-04PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2004 assessment of \$176,500 (land \$44,400; building \$132,100) on Map U16/Lot 029, a two-family property on 0.35 acres at 60 Concord Street (the “Property”). [The Taxpayers also own a single family residence at 105 Hunter Farm Road in the Town which was not appealed and which the parties stipulated was proportionately assessed.] 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) the Taxpayers have owned the Property since 1994 and it has two rental apartments;
- (2) one of the Taxpayers (Douglas Whitney) is a licensed, certified general appraiser with an office in the Town who is familiar with the local market and prepared an appraisal estimating the value of the Property at \$155,000 as of the assessment date, using sales comparable to the Property;
- (3) only about 5,000 square feet of the land on the Property is useable because of the narrow configuration of the lot and its sharp drop to the Contoocook River, as shown in Taxpayer Exhibit No. 1;
- (4) the river location is not an amenity because tenants do not value proximity to the river due to child safety and ice issues and the river is shallow, wide and fairly brushy in this area; and
- (5) the Town's comparables include one property (owned by a church) that was not on the market and did not sell, one in a better location and a third which was a dentist's office with a commercial use that was significantly renovated by the purchaser and has a two-car garage.

The Town argued the assessment was proper because:

- (1) the Town performed a revaluation in tax year 2004;
- (2) for any property, there is a range which reflects its market value and an assessment, to be proportional, should fall within this range;
- (3) the Taxpayers' appraisal made no positive adjustment for the location of the Property on the Contoocook River;
- (4) the appraisal also failed to make adequate adjustments for the comparables stated, based on other factors which included the following: one of the comparables was sold to the realtor who was going to be the listing agent and was appraised for \$220,000, considerably more than the

\$180,000 selling price; another had a “leaseback arrangement” (for the seller), but no adjustment was made for this factor which creates an uncertainty (“nuisance”) and would probably have had an impact on its selling price; and a third had structural and deferred maintenance issues, including rotting sills and woodwork, a structurally unsound barn and a failing septic system, all of which were disclosed to potential purchasers and would have an impact on its selling price; (4) there were other comparable sales with higher prices which were not used in the Taxpayers’ appraisal and the validity of this appraisal is also questionable because it was prepared by one of the Taxpayers, diminishing any weight it would otherwise be entitled to; and (5) the Taxpayers failed to prove the Property was disproportionately assessed.

The board held a consolidated hearing of this appeal with Docket No. 21193-04PT, a two-family property at 42 Summer Street in the Town owned by one of the Taxpayers (Douglas Whitney). The board considered all of the evidence presented with respect to both appeals. The parties stipulated the level of assessment in the Town was 97.1% in tax year 2004.

Board’s Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the assessment was disproportional. The appeal is therefore denied.

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).

In order to establish disproportionality and obtain an abatement, the Taxpayers were required to show the market value of the Property in its highest and best use was less than

\$181,800 (\$176,500 assessment divided by 97.1% level of assessment, rounded). In this appeal, they failed to do so.

The Taxpayers presented an appraisal estimating the value of the Property at \$155,000 (in a range from \$154,000 to \$158,000). This appraisal was prepared by one of the Taxpayers (Douglas Whitney) rather than by someone who could truly be said to be disinterested in the outcome pertaining to its use. While Mr. Whitney's credentials and familiarity with the local market are not at issue, the Town has raised valid questions and has cast doubt on whether an appraisal performed by a professional having a significant (50%) ownership interest should be given much weight, given the appraiser's clear interest in the outcome and the recognized concerns and safeguards in the profession regarding "impartiality, objectivity, and independence."

Relevant to these concerns is the "Ethics Rule" promulgated by the Appraisal Institute and published in conjunction with "USPAP" (the Uniform Standards of Appraisal Practice). This Ethics Rule clearly provides, "An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests" and, in practice, "must not perform as an advocate for any party or issue." Appraisal Institute, USPAP (2006 Ed.) at p. 7. Inherent is the expectation that a USPAP appraiser will "perform valuation services competently and in a manner that is independent, impartial and objective." Id. at p. 1.

The board further notes there is no clear disclosure of the relationship between the appraiser and the client in the Taxpayers' appraisal. Such disclosure is prudent given the obligation stated in the same rule: "An appraiser must not communicate assignment results in a misleading or fraudulent manner." Id. at p. 7. The Taxpayers' appraisal also does not include the certification required in USPAP Standard Rule 2-3, which requires certain specific

representations that the appraiser is impartial and unbiased, including the following: “I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.” Id. at p. 30.

Even if these concerns can be set aside, however, the Taxpayers’ “final value” estimate of \$155,000 in the appraisal is not too far from the Town’s indicated value of \$181,800. The board finds merit in the Town’s position that a range of values exist for property of this type and, based on the evidence, the Town’s assessment is within an acceptable range. The appraisal (at “Page 1 of 2”) further notes “market conditions are good and there has been an overall shortage of available properties for sale in the area.” All other things being equal, a relative shortage increases the value of an asset.

The Town raised questions (summarized above) regarding the comparables selected and the adjustments which should have been made in the Taxpayers’ appraisal. The Town’s assessor indicated appropriate selection and adjustments would have increased the value estimate in the appraisal, bringing it in line with the Town’s assessment.

The board has noted the location of the Property on the river close to the village center and finds the Taxpayers failed to prove this location, on balance, is not desirable and would not add value to the Property. Even if one or more tenants (with young children) may have safety concerns regarding proximity to the river, there was no evidence presented that the market as a whole would not place a higher value on the Property due to this feature. In other words, value is determined by highest and best use in the market as a whole, not necessarily on how a particular tenant may view a specific feature.

The board further notes the Town made some adjustments, including a minus 15% adjustment for topography, in arriving at the assessed value. The board has considered the Taxpayers' remaining arguments and finds none are sufficient to grant an abatement.

For all of these reasons, the board finds the Taxpayers failed to prove the assessment was disproportional 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

Paul B. Franklin, Chairman

Albert F. Shamash, Esq., Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Douglas and Christy Whitney, PO Box 435, Peterborough, NH 03458, Taxpayers; and Chairman, Board of Selectmen, Town of Peterborough, 1 Grove St., Peterborough, NH 03458.

Date: August 3, 2007

Anne M. Stelmach, Clerk