

Patricia and Peter D. Sell

v.

Town of Conway

Docket No.: 23286-06PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2006 assessment of \$128,300 (land \$55,800; building \$72,500) on Map 264/Lot 54, at 13 Olympic Lane, a single family home on a 1.3 acre lot (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayers carried this burden.

One of the Taxpayers, Patricia Sell, attended the hearing and argued the assessment was excessive because:

- (1) the 15 comparables presented, photographs, plans and other evidence contained in the Taxpayers' exhibits support the request for an abatement;
- (2) the "Lee" appraisal estimates the market value of the Property at \$88,000;
- (3) the Property has a number of undesirable features, including close/immediate proximity to an active recreational rail line, access via a right of way over the rail line, proximity to a school and the 'junk yard' next door, as well as the poor condition and quality of the house;
- (4) the undesirable features have an impact on the value of the view assessed by the Town; and
- (5) the value of the Property was no more than \$89,000 as of the assessment date and an abatement should be granted.

The Town argued the assessment was proper because:

- (1) the Town adjusted for the undesirable features by reducing the site value by a 50% factor;
- (2) the Town's comparables in the "Schofield" analysis (Municipality Exhibit F) support the assessment;
- (3) a number of the view inconsistencies pointed out by the Taxpayers were investigated and the Town either made adjustments where warranted or noted the other offsetting attributes of the properties pointed out by the Taxpayers;
- (4) the Taxpayers had an earlier appraisal (for refinancing), the "Yankee" appraisal, which she did not disclose to the Town, which indicated a value of \$110,000 as of December, 2002;
- (5) the Taxpayers purchased the Property for \$80,000 in May, 2000 and properties in the Town have appreciated substantially since that time; various time adjustments computed on the purchase price and the Yankee appraisal indicate the assessed value was not disproportionate;

(6) the Town has invested substantial time and resources to address the many issues raised by the Taxpayers; and

(7) no abatement is warranted and the appeal should be dismissed.

At the hearing, the Town indicated the level of assessment was 80.4% for tax year 2006 as reflected in the median ratio computed by the department of revenue administration and Mrs. Sell did not object to the use of this ratio.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$113,300. The board has considered and reviewed the voluminous documentation submitted by both sides in arriving at this value conclusion. However, despite the multiple issues raised, the board need not address each issue in detail but will only make those findings sufficient to support its value conclusion. See, e.g., Appeal of City of Nashua, 138 N.H. 261, 265 (1994).

As a specialized tribunal, the board has de novo appellate authority to review all the evidence submitted. To determine whether an abatement is warranted, the board considers and weights the market value evidence presented, utilizing its “experience, technical competence and specialized knowledge.” See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it.”) Further, in making its findings where there is conflicting evidence, the board must determine for itself the credibility of the witnesses and the weight to be given the testimony of each because “judgment is the touchstone.” See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974), and Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975);

see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

Assessments must be based on market value pursuant to RSA 75:1. In order for the board to grant an abatement, the Taxpayers have the burden of proving the market value of the Property as of the assessment date, April 1, 2006, was less than \$159,600, rounded (\$128,300 divided by 80.4%). Upon review of the evidence as a whole, the board finds abatement is warranted for the following reasons.

Although the board considered all the comparables presented by the parties, the board finds Comparable 7 in the Schofield analysis provides the best benchmark for estimating market value and arriving at a proportionate assessment. Comparable 7 is a smaller dwelling of similar quality and in similar overall condition and has some of the same influence factors, such as proximity to the rail line and a less than desirable neighboring property and is also accessed by a right of way. This comparable, without a view, sold for \$122,000 in February, 2006. Because of this good comparable, the board can give no weight to the value conclusion in the Lee Appraisal (\$88,000) which also suffers from the deficiencies and inconsistencies noted by the Town.

On the other hand, the board finds the equalized value of the Property indicated by the Town's assessment (\$159,600) is too high. This finding is primarily based on the fact that neither the Schofield analysis nor the assessment recognizes that the value of the desirable site related view is also impacted by the undesirable features noted above. In other words, the board finds the situs value reflected in the lot value and the view value assessed separately are inextricably linked and this is how the market is likely to perceive the value of the Property as a whole.

To arrive at a proportionate assessment, the board applied the 50% negative adjustment to the site and view calculation, which results in an assessment of \$113,300 and an equalized value of approximately \$141,000.

The board considered whether the Town had sufficiently taken into account the condition of the dwelling as reflected in the photographs submitted by the Taxpayers. While the evidence indicates the dwelling is in fair to average condition, the Town's 40% depreciation appears to be reflective of the market perception of such conditions as indicated by a number of comparables including Comparable 7.

In conclusion, the board finds the assessment should be abated to \$113,300.

If the taxes have been paid, the amount paid on the value in excess of \$113,300 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years.

RSA 76:17-c, I and II.

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(g). 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.

The "Requests" received from the Town are replicated below, in the form submitted and without any typographical corrections or other changes. The board's responses are in bold face.

With respect to the Requests, "neither granted nor denied" generally means one of the following:

- a. the Request contained multiple requests for which a consistent response could not be given;
- b. the Request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the Request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. the Request was irrelevant; or
- e. the Request is specifically addressed in the Decision.

TOWN OF CONWAY'S PROPOSED FINDINGS OF FACT AND RULINGS OF LAW

1. This is a Tax Year 2006 appeal of 13 Olympic Lane (Map 264, Lot 54) located in Conway, New Hampshire, owned by Peter and Patricia Sell.

Granted.

2. The Town's assessment of the subject property in 2006 was \$128,300 (Land: \$55,800; Building: \$72,500).

Granted.

3. The Taxpayer's opinion of market value for Tax Year 2006 was \$89,000. *See* Section G of the Taxpayer's BTLA Appeal dated September 1, 2007 (hereinafter "Taxpayer's Appeal").

Granted.

4. Dale B. Schofield, CNHA, Conway's Assistant Assessor, reviewed the Town's assessment of the subject property at the Taxpayer's request. Ms. Schofield decided to conduct an Appraisal.

Granted.

5. In conducting her Appraisal, Ms. Schofield used 6 of the comparable properties submitted to the Town by the Taxpayer with her abatement application, as well as a 7th comparable which Ms. Schofield found on her own.

Granted.

6. Ms. Schofield's opinion of value as of April 1, 2006 was \$161,000. *See* p. 42 of the Schofield Appraisal.

Granted.

7. The equalized value (applying the 80.4% equalization ration for 2006) of the Town's 2006 Assessment was \$159,600.

Granted.

8. The Town answered the Taxpayer's 2006 Application for Abatement by offering a new assessed value of \$126,400 (which would amount to an abatement of taxes in the amount of \$37). *See* Exhibit L attached to Taxpayer's Appeal.

Granted.

9. The Taxpayer rejected the Town's abatement offer and filed this appeal with the New Hampshire Board of Tax and Land Appeals.

Granted.

10. The Taxpayer submitted 10 comparable properties to the BTLA under cover letter dated September 18, 2008, and an additional 5 comparable properties under cover letter dated October 10, 2008.

Granted.

11. Ms. Schofield gave her opinion on each of the Taxpayer's comparables at trial. For a variety of reasons, Ms. Schofield found them to be quite distinguishable from the subject property.

Granted.

12. The Taxpayer admitted that Nancy Hayes of Yankee Appraisals, an appraiser located in Conway, conducted an appraisal of the subject property in 2002 for Woodlands Credit Union. The Town had requested a copy of this Appraisal from the Taxpayer and the Taxpayer refused to release the same or otherwise provide it to the Town.

Granted.

13. The Taxpayer admitted that Nancy Hayes' opinion of value for the subject property in 2002 was \$110,000.

Granted.

14. The Taxpayer submitted an Appraisal by Michael Lee as of April 1, 2006. Mr. Lee gave an opinion of value of the subject property of \$88,000.

Granted.

15. Conway Tax Assessor, Tom Holmes, also testified and he suggested that Mr. Lee's Appraisal was flawed for a number of reasons.

Granted.

16. Mr. Holmes was critical of Mr. Lee's treatment of the Taxpayer's views. Mr. Lee only added \$1,000 to the value of the subject property as a result of the views. Mr. Lee explains in his addendum that the mountain view "would add minimal value to the subject due to the above noted site deficiencies."

Granted.

17. Mr. Holmes testified that, in his opinion, Mr. Lee deducted for the same detrimental conditions twice: first when he made deductions for these "deficiencies" from the value of the view and again when he applied an additional deduction of \$30,000 because of detrimental conditions.

Granted.

18. The board agrees that by deducting for the same detrimental conditions twice, Mr. Lee's appraisal conclusion is incorrect.

Neither granted nor denied.

19. Mr. Lee also failed to take photos of the views which would typically be done in an appraisal of this nature.

Granted.

20. Mr. Holmes also noted that Mr. Lee's appraisal indicates that Comp. #3 sold for \$143,500 in November, 2005; yet the Warranty Deed from 41 Hillside Avenue, LLC to Joseph P. Daigle recorded in the Carroll County Registry of Deeds on November 15, 2005 at Book 2478, Page 976, indicates that the property actually sold for \$153,500.

Granted.

21. Also, Mr. Holmes noted that Comp. #1 used by Mr. Lee, which sold for \$152,000 in March, 2006, had previously sold for \$78,500 in January, 1999, as evidenced by a Warranty Deed from George H. Allan, Jr. to Brenda Arciere recorded in the Carroll County Registry of Deeds on January 8, 1999 at Book 1787, Page 209.

Granted.

22. Therefore, Mr. Holmes opined, if Comp #1 used by Mr. Lee approximately doubled in value between 1999 and 2006, it would be reasonable to assume that the Taxpayer's property would do the same.

Granted.

23. The Taxpayer and her husband purchased their property in 2000 for \$80,000 (the property was purchased in Peter Sell's name and then transferred to Peter and Patricia Sell). Obviously, if one were to double the Taxpayer's 2000 purchase price, one would arrive at \$160,000, an amount substantially the same as the Town's 2006 assessment and Ms. Schofield's Appraisal.

Granted.

24. Mr. Holmes also conducted an analysis of Nancy Hayes' 2002 Appraisal number (\$110,000) as compared to the Town's 2006 Assessment (\$128,300).

Granted.

25. Mr. Holmes concluded that Nancy Hayes' appraisal, time adjusted to 2006, would be \$155,166. The indicated value of the Taxpayer's property as of April 1, 2006 based on the 2006 equalized assessment of \$128,300 was \$159,600 (a difference of 3%).

Granted.

The board notes Tax 201.36 limits a party to no more than 25 requests unless prior leave is granted. Since no leave was requested, the board will not respond to the remaining requests submitted by the Town.

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: Patricia and Peter D. Sell, PO Box 1160, Conway, NH 03818, Taxpayers; Chairman, Office of the Selectmen, Town of Conway, 1634 East Main Street, Center Conway, NH 03813; and Peter J. Malia, Jr., Esq., Hastings Law Office PA, PO Box 290, Fryeburg, ME 04037, counsel for the Town.

Date: November 19, 2008

Anne M. Stelmach, Clerk

Patricia and Peter D. Sell

v.

Town of Conway

Docket No.: 23286-06PT

ORDER

The board has reviewed the December 17, 2008 “Rehearing Motion” (“Motion”) filed by the “Taxpayers” with respect to the board’s November 19, 2008 Decision and the December 23, 2008 “Objection” filed by the “Town” to the Motion. The board’s December 30, 2008 suspension order (entered in to allow more time to consider the Motion) is hereby dissolved and the Motion is denied.

The Taxpayers, represented by Mrs. Sell, request a rehearing because they wish to argue further various factual contentions they have made. But, as noted on page 3 of the Decision, the board has already reviewed and considered the “voluminous documentation,” as well as the testimony presented by the parties at a protracted hearing on October 27, 2008 (encompassing almost 4 ½ hours). The Motion suggests a rehearing (or at least “clarification”) is necessary so that the board can “reconsider the weight” given to various pieces of the extensive evidence presented. The board disagrees.

The assessment on the Property under appeal was \$128,300 and the abatement granted by the board was to \$113,300. The Motion does not state how much lower the Taxpayers contend the assessment should be. For the present purpose, however, it is sufficient to note that the parties, especially Mrs. Sell, have expended considerable resources to argue about what is, in dollar terms, a very modest amount in dispute. There is simply no need to expend undue resources responding in additional detail to issues already addressed in the Decision insofar as they affect the board's market value finding.

The board's task is more focused than what may be perceived by the Taxpayers and its statutory authority and role is not to resolve all disputed issues that may have arisen between the parties, or that may continue to exist, except insofar as they impact on the ultimate question of whether the Property has been disproportionately assessed and, if so, by how much. The test for disproportionality is market value, adjusted by the level of assessment in the Town. See RSA 75:1; and, more generally, Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985); and Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (2003). As further noted in Porter, even allegations of a "flawed methodology" used by a municipality is not sufficient to prove disproportionality and is not sufficient to prove the Property is entitled to an abatement. Id. at 369.

The Motion makes a number of separate contentions that reflect the Taxpayers' fundamental disagreements with the Town. The board declines to address them individually here, for the precise reason stated on page 3 of the Decision ("despite the multiple issues raised, the board need not address each issue in detail but will only make those findings sufficient to support its value conclusion. See, e.g., Appeal of City of Nashua, 138 N.H. 261, 265 (1994)").

Among other things, the Motion attaches a new spreadsheet aimed at comparing the “Property” owned by the Taxpayers with 15 others for overall condition. Even if this and other evidence is not excluded as new evidence under Tax 201.37(g), the board finds a detailed response to each of the arguments for reconsideration contained in the Motion would not alter the outcome of this appeal or its finding regarding how much of an abatement the Property is entitled to for tax year 2006. This finding is based on the board’s consideration of the evidence as a whole, not on reliance on any isolated analysis or discrete piece of evidence. Similarly, the board did not rely on “the Hayes appraisals” discussed at the hearing and mentioned in the Motion and so the Taxpayers’ attempt to reargue their lack of applicability is not relevant.

In brief, and as also noted in the Town’s Objection, the Motion fails to demonstrate the board has overlooked or misapprehended the facts or the law and such error has affected the Decision, the standard for rehearing or reconsideration stated in Tax 201.37(e). The Motion is therefore denied.

Any appeal to the supreme court must be filed within thirty (30) days of the date of this Order. See RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Albert F. Shamash, Esq., Member

Certification

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Page 14 of 14

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Date: January 6, 2009

Anne M. Stelmach, Clerk