

**Gerald and Hania McAuliffe and James and Nancy McAuliffe**

**v.**

**Town of Walpole**

**Docket No.: 23479-07PT**

**DECISION**

The “Taxpayers’” appeal, pursuant to RSA 76:16-a, the “Town’s” 2007 assessment of \$188,500 (land \$42,800; building \$145,700) on Map 28/Lot 91, a two family home on 0.160 acres (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.

The Taxpayers argued the assessment was excessive because:

- (1) assessed values for two family houses in North Walpole are consistently above the market;
- (2) the Town’s assessments do not consider the number of rental units that exist in a house;

- (3) a review of five sales of two family homes in North Walpole between January 2006 and August 2008 supports the overassessment of the Property;
- (4) the market peaked for multi-family housing in North Walpole around the end of 2005 and then declined; and
- (5) based primarily on the sales data, the assessment is not consistent with the market and a value of \$130,000 to \$150,000 is appropriate.

The Town argued the assessment was proper because:

- (1) four comparable sales which occurred between January 2006 and December 2007, when adjusted for differences in number of units, size and condition, support the Town's assessment;
- (2) to consider the number of units in a property without also considering its condition would undermine the sales analysis;
- (3) many of the multi-family properties purchased in North Walpole are purchased for low income housing with rental rates in the \$700 range;
- (4) the Property is in good condition for its age, appears to be rented below market and could produce higher rents.

The Town's level of assessment was 100.1% based on the department of revenue administration's median ratio for 2007. In practical terms, the Town's 2007 reassessment resulted in assessments being at market value.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$166,000.

The board finds merit to some extent in both parties' arguments and evidence submitted. On one hand, the board agrees with the Taxpayers' assertion that the number of rentable units in a two or three unit dwelling is a significant factor that the market recognizes. As the Taxpayers

argued, if all other factors are even, a property that would generate half again as much rental income (a three family rental property) would command a greater price than a similar sized two family rental property. On the other hand, a larger square footage two family property (especially one with three bedrooms versus two), is likely to command a higher price than a smaller two family rental property. To reconcile these to some extent conflicting arguments and market factors, the board considers and weighs 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). As a consequence, the board utilized its best judgment in analyzing the limited market data in arriving at the decision’s highest and best use and value conclusion.

In Taxpayers’ Exhibit No. 1, the Taxpayers submitted the sales of four two family rental properties in the immediate neighborhood of North Walpole: 28 Church Street; 1028 Main Street; 5 Pine Street; and 1 Pine Street. In Municipality Exhibit A, the Town submitted four sales (two of which were also submitted by the Taxpayers) of two and three family rental properties in North Walpole: 28 Church Street; 5 Pine Street; 7 Ash Street; and 72 Church

Street. The board has analyzed the six sales submitted by both parties utilizing two units of comparison: 1) the sale price per unit; and 2) the sale price per square foot of effective building area. Without replicating the analysis, the board utilized the sale of each one of the six comparables that was most indicative of an arm's-length transaction and closest in proximity to April 1, 2007. For example, the board utilized the September 30, 2005 sale (\$151,000) of the Taxpayers' comparable at 1028 Main Street rather than the subsequent foreclosure and bank resale that occurred in 2007 and 2008. The board also applied the Town's market condition adjustment of 1% per month as discussed in Municipality Exhibit A. On a per unit basis, the time adjusted sale prices of the six comparables correlated to approximately \$78,000 per unit (as part of the analysis the board calculated the median and mean of the indicated time adjusted sale prices per unit). Applying this metric of market value to the Taxpayers' two units estimates a market value of \$156,000. On a per square foot basis, the board reconciled the time adjusted price per square foot of effective area to \$56 per square foot. Applying this unit of comparison to the Taxpayers' effective square footage of 3,364 indicates a market value of \$188,400.

Utilizing the board's judgment and experience<sup>1</sup>, we have applied twice the weight (66%) to the per unit market value estimate than the price per square foot market value estimate because we agree with the Taxpayers that the sale price of rental multi-family properties that are partially purchased for their income stream would be more strongly influenced by the number of rental units than the gross size of the building. We do recognize however that square footage is an additional but lesser metric in the market and thus the board has given 33% weight to the price per square foot market value estimate. Applying these weighted factors to the two indicated

---

<sup>1</sup> The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33, VI; Appeal of City of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

market values results in a correlated market value estimate of \$166,000 rounded. The board believes this estimate is supported by the sales data submitted by the parties if adjustments are made for the differences between the features of the comparables and the Property such as number of rental units, total square footage of building, size of lots, condition, and ability to create additional units.

If the taxes have been paid, the amount paid on the value in excess of \$166,000 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Paul B. Franklin, Chairman

---

Michele E. LeBrun, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Gerald and Hania McAuliffe and James and Nancy McAuliffe, 22 Riverbend Drive, Springfield, VT 05156, Taxpayers; Chairman, Board of Selectmen, Town of Walpole, PO Box 729, Walpole, NH 03608; and Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: April 5, 2010

---

Anne M. Stelmach, Clerk