

Stanley and Candace Brehm

v.

Town of Chichester

Docket No.: 24351-08PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$812,700 (land \$174,900; building \$637,800) on Map 3/Lot 11, an office building on 1.99 acres (the “Property”). (The Taxpayers also own, but are not appealing, a single family home on 35.6 acres, Map 25/Lot 6, assessed at \$479,186 and a 5.44 acre vacant lot, Map 25, Lot 5, assessed at \$86,300, but the parties stipulated these other properties were proportionately assessed.) For the reasons stated below, the appeal for abatement on the Property 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) the Property, a professional office building, is located at 160 Dover Road (Routes 4, 9 and 202), a location that has “drastically changed” due to increased traffic, additional traveling lanes and a traffic light, making it very difficult to enter and exit the Property for tenants and visitors;
- (2) the Property has 12 units, but one tenant, renting five units for nine years, notified the Taxpayer in January, 2008 of a lease cancellation, effective June, 2008, and the Property lost another tenant in January, 2009 and is now only at about 60% occupancy;
- (3) the Property has no elevator, is not handicapped-accessible (above the first floor) and needs a new roof and replacement windows;
- (4) in part because of the high assessment, the Taxpayers listed the Property for sale initially at \$680,000 but have reduced the asking price to \$575,000, and a broker estimated the Property has a value of \$530,000; and
- (5) a more reasonable assessment “should be somewhere between \$500,000 and \$550,000” as stated in the appeal document and also supported by the Taxpayers’ own analysis using the income approach.

The Town argued the assessment, with the substantial adjustment mentioned below, is proper because:

- (1) the Town did a full revaluation in 2008 performed by Purvis & Associates;
- (2) the Town accounted for the condition of the building and the lack of an elevator with an average quality rating, 13% “normal” depreciation and 5% functional depreciation;
- (3) the Taxpayers’ income approach is based on actual rents, not potential rental income;
- (4) after further review, the Town is now prepared to adjust the assessment to \$635,000 for tax year 2008; and

(5) no further abatement below this amount is warranted.

The parties stipulated the level of assessment in the Town was 99.6%, the median ratio calculated by the department of revenue administration for tax year 2008. Following the hearing, the board took a view of the Property on July 1, 2010 (“View”), in the presence of one of the Taxpayers and two Town representatives.

Board’s Rulings

Based on the evidence, the board finds the proper assessment to be \$643,600 (rounded). The appeal is therefore granted for the reasons summarized below.

In deciding the proportionality of an assessment, the board considers and weighs all of the evidence presented, applying the board’s “experience, technical competence and specialized knowledge” to this evidence. See RSA 71-B:1; and former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. at 265 (the board has the ability, recognized in the statutes, to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it”).

The Property is a 12-unit professional office building with three-stories (including a ‘walk-out’ basement level) constructed in 1980. The Property is on a heavily-trafficked road (Dover Road is also Routes 4, 9 and 202), which enhances its visibility, on the one hand, but also creates access difficulties, especially at peak travel times.

The Town applied 5% functional depreciation and 13% physical depreciation to arrive at the \$630,400 building value shown on the assessment-record card (separate from the \$174,900 land value and \$7,400 features value for a shed and paving). The building has no elevator and installing a central elevator to modernize and make the building handicapped accessible may not

be feasible, according to the Taxpayers, given the physical layout of the offices observed by the board on the View.

Considering the evidence as a whole, the board finds more functional (15%) and physical (25%)¹ depreciation is warranted, given the layout, lack of elevator, age and overall condition and quality of the exterior and interior of the building observed by the board. Applying this adjusted depreciation yields a building value of \$461,300 (rounded), which, when added to the land (\$174,900) and features (\$7,400) values, yields a total abated assessment of \$643,600. While the Town mentioned a slightly lower recommended abated value (\$635,000) at the hearing, the derivation of this number is not clear and it is only nominally different from the abated assessment arrived at by the board. The Taxpayers testified they had listed the Property for sale in August, 2009 at \$680,000, which is also in line with the board's findings of an abated assessment of \$643,600.

The board considered, but could not give weight to, the Taxpayers' simplified income approach presented to argue for a larger abatement. As the Town correctly pointed out, the Taxpayers used actual rent rather than potential gross income in their analysis. This is not consistent with appraisal theory and practice and probably leads to an unreasonably low estimate of value.² See, e.g., MTS Development Corp. v. City of Lebanon, BTLA Docket No. 23302-06PT (January 21, 2010) (income approach employed to value office building with market-based estimates of potential gross income and other variables).

¹ Based on the assessing methodology in place, the board has applied 13% "normal" depreciation plus 12% additional depreciation to reflect the overall condition of the building, including the original windows and roof in need of replacement.

² Similarly, the board could not place weight on an unidentified 'broker estimate' of \$530,000, since no documentation or witness was produced by the Taxpayers to confirm or qualify the basis for such an estimate or indicate the date of valuation. The Taxpayers could have presented a professional appraisal to help establish the market value of the Property as of the assessment date, but chose not to do so.

If the taxes have been paid, the amount paid on the value in excess of \$643,600 for tax year 2008 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

Douglas S. Ricard, Member

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: Stanley and Candace Brehm, 75 Hutchinson Road, Chichester, NH 03258, Taxpayers; Chairman, Board of Selectmen, Town of Chichester, 54 Main Street, Chichester, NH 03258; and Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Contracted Assessing Firm.

Date: 7/9/10

Anne M. Stelmach, Clerk