

Customer Perspectives, LLC

v.

Town of Hooksett

Docket Nos.: 24508-08PT/25265-09PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” total assessments of \$334,000 in tax year 2008 and \$334,900 in tax year 2009¹ on 213 West River Road, Map/Lot 24/29/1 (the “Property”). For the reasons stated below, the appeals for abatement are 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.

¹ These values are stated in the Town’s May 9, 2011 letter. While the May 16, 2011 response of one of the Taxpayer’s representatives (Mr. Robert M. Mongan) discussed the 2010 and 2011 assessed values, they are not the subject of these appeals.

The Taxpayer argued the assessments were excessive because:

- (1) the Property is a commercial property, but was built around 1950 as a single-family home and then converted to a commercial use and has been so used (at least since its purchase by the Taxpayer in 1990);
- (2) while the condition and quality of the building shown on the Town's assessment-record cards is not in dispute, the Town improperly assessed the Property as if the finished basement area contributed significantly to market value, which it does not;
- (3) although the Taxpayer formerly used the basement as part of its business, it has been left vacant for more than ten years;
- (4) the basement has no heating system, a low ("dropped") ceiling of 6 feet, 9 inches, no private access and is "damp" and "musty" (due to seasonal water issues);
- (5) the Property had a market value of no more than \$240,000 in each tax year, a conclusion supported by the information contained in Taxpayer Exhibit Nos. 1, 2 and 4 and the appeal documents; and
- (6) the assessment should be abated accordingly.

The Town argued the assessments were proper because:

- (1) the Town performed a revaluation in tax year 2008, hiring an outside contractor (Steve Traub) to complete a statistical update of all commercial and industrial properties, adjusting values using sales data from April, 2005 to April, 2008 and other available information;
- (2) the assessments under appeal were a result of this update, abated somewhat due to a physical inspection performed on June 25, 2009 (in response to the Taxpayer's abatement request) after which the Town reduced the total building value to correct for certain physical measurement errors pertaining to ancillary areas (a patio and porch);

(3) the Taxpayer does not dispute the Property, as shown on the assessment-record card, has 2,227 square feet of finished commercial space on the first floor and an additional 2,152 square feet of finished space in the basement, which is carpeted and was productively used as commercial space for a number of years by the Taxpayer until a business decline and reduced employee staffing;

(4) as explained by Mr. Traub, the Town attributed some contributory value to the finished basement space, but not an excessive amount, and this was done, as shown on the assessment-record card, by reducing the effective area by 30% and applying a 10% functional obsolescence factor to the total building value (not just the basement area), even though the obsolescence pertains only to the basement area and not the first floor;

(5) the Town assessed the Property consistently with other commercial and industrial properties in the Town; and

(6) the Taxpayer failed to meet its burden of proving disproportionality.

The parties agreed the levels of assessment were 92.9% in tax year 2008 and 101.2% in tax year 2009, the median ratios calculated by the department of revenue administration.

At the start of the hearing, the board reviewed the appeal document filed for each tax year with the parties and confirmed the Taxpayer's joint representation by the two individuals who appeared at the hearing: Mr. Robert P. Mongan, a licensed real estate appraiser, and David W. Hess, an attorney and the spouse of the single member and owner (Judith Ann Hess) of the Taxpayer, a limited liability company ("LLC").

Prior to any argument, the Town decided to withdraw the April 15, 2011 motion to dismiss it had previously filed (which the board indicated would be "the first issue addressed at

the hearing” in its April 26, 2011 Order). Because of this voluntary withdrawal (rendering the motion to dismiss moot), the board proceeded to a hearing on the merits of these appeals.

Board’s Rulings

Based on the evidence presented, the board finds the Taxpayer failed to meet its burden of proving disproportionality. The appeals are therefore denied for the reasons stated below.

Assessments must be based on market value adjusted by the level of assessment in the Town. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). In deciding whether a tax abatement is warranted, the board examines the market value evidence presented and looks at the Property’s value as a whole (i.e., as land and buildings together) because this is how the market views value and it is the Taxpayer’s entire estate that must be considered. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). Even when a taxpayer wishes to challenge only one component of the assessment, such as the land value or all or a portion of the building value (such as the finished basement area on the Property), a taxpayer still has the burden of proving the aggregate value of the property as a whole is disproportional and the total assessment is excessive. Appeal of Walsh, 156 N.H. 347, 356 (2007).

In order to prevail in these appeals, the Taxpayer therefore had the burden of presenting credible evidence (and meeting its burden of proof by a preponderance of the evidence) that the market value of the Property as a whole was less than the equalized values resulting when the level of assessment in each tax year (92.9% and 101.2%) is applied to the assessments under appeal.

The board finds the Taxpayer failed to meet this burden. Although one of its representatives is a licensed appraiser, the Taxpayer chose not to present an appraisal or any other sufficiently reliable market evidence and also did not comply with the board’s rules

regarding the timely exchange of certain documents it wished to present to support an abatement; the board therefore ruled part of this documentation (an unsigned property-specific “analysis” of selected sales to support a price per square foot estimated range for the first floor finished space) was inadmissible. See Tax 201.35 and Tax 102.07; see also Tax 203.07(g) (excluding from the hearing any taxpayer appraisal not provided to the municipality by the end of the mediation process).

In the appeal documents and in his closing arguments, one of the Taxpayer’s representatives (Mr. Mongan) contended the market value of the Property was the same in tax years 2008 and 2009 and that value was \$240,000. The board finds this contention is not credible and not supported by the market data presented.

Before making this finding, the board did consider Taxpayer Exhibit Nos. 1, 2 and 4, which contain photographs of the exterior of the Property (but not the finished areas of either the basement area or the first floor) as well as disparate sales data and photographs mainly of commercial properties in other locations (Amherst, Concord, Epsom, Litchfield, Manchester and Pembroke). Taxpayer Exhibit No. 4 does include one sale in the Town (10 Brace Avenue), which, according to the assessment-record card, was “on (the) market (in) 2008 for \$369,000,” but sold in January, 2009 for \$247,500. The board, however, could not give this scattered data any probative weight because of the lack of any credible analysis of how comparable these properties might be and what types of adjustments might be necessary to arrive at a supportable estimate of market value for the Property as of the assessment date in each tax year.

The board finds the Town reasonably relied on market data when it performed the statistical update and revalued all commercial and industrial properties in tax year 2008. This data included four commercial property sales in the Town, two of which were quite similar in

size to the finished first floor area of the Property (2,227 square feet compared to 2,288 square feet for 1310 Hooksett Road and 2,345 square feet for 278 Londonderry Road). Mr. Traub, the Town's primary witness, noted the much higher calculated values per square foot of these two sales (\$198.20 and \$275.28, respectively, as shown in the excerpts from the Town's assessment manual submitted previously to the Taxpayer and the board and discussed at the hearing).

Mr. Traub concluded that even if reasonable adjustments are made for the better location, quality and other differences, offset to some degree by the advantage of the finished basement area on the Property, the assessed values are supported by these sales. The board agrees. A computation, for example, based on an adjusted price of \$150 per square foot (well below the indication from these two sales) times the 2,227 square feet on the first floor yields an indicated market value of \$334,000, rounded. These calculations suggest the assessed values are proportional if some contributory value is assigned to the finished basement area.

From Mr. Traub's testimony and the other evidence presented, the board further finds the Property's assessment was arrived at employing the same methodology used in assessing other properties in the Town and this finding is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982). This evidence is corroborated by the assessment-record card for another commercial property (10 Brace Avenue, see Taxpayer Exhibit No. 4), which reflects a similar land value for similar acreage, as well as a substantial contributory value for an unfinished basement area.

At the hearing, much of the Taxpayer's arguments focused on a contention the Town's assessments for the two tax years under appeal overstated the contributory value of the finished basement area due to the factors noted above (lack of private access, low ceiling height, lack of a heating system, dampness and so forth). The board disagrees for a number of reasons.

First, while it is conceivable the basement area could not be rented separately because of the factors noted above (chiefly, the lack of private access), the board finds a finished basement in a commercial property adds some contributory value which the Taxpayer failed to account for or adequately quantify in its arguments for an abatement on the Property. In the board's experience, a reasonable commercial buyer (or tenant) would likely make some use of the finished basement area, even if it is in sub-optimal condition and whether or not the present owner, the Taxpayer, has a present business use for it. For assessment and appraisal purposes, it is the value in exchange that is relevant, not necessarily the value in use of a property and, when arriving at a proportionate assessment, all relevant factors affecting market value must be considered. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). Here, the board did not find credible evidence to support the Taxpayer's argument that the finished basement had no contributory value or, alternatively, that the Town overstated that value in assessing the Property in tax years 2008 and 2009.

Second, the board finds the Town did not err in concluding that even a finished basement with some negative attributes added some contributory value to the Property because the market would recognize the advantage and greater value of a commercial building with a basement compared to a commercial building without one (built on a slab, for example). Further, no explanation was given by the Taxpayer regarding whether the allegedly damp basement condition could be ameliorated at a relatively nominal cost (through use of a dehumidifier and/or a sump pump, for example) and no photographs were submitted of the interior of the Property to allow the board to ascertain the relative condition of either the first floor or basement areas. A second Town witness, Cheryl Akstin, a certified appraiser and assessor, inspected the Property in June, 2009 and observed the condition of the basement, including the fact it was carpeted and

had a dropped ceiling; she did not testify to observing dampness or related adverse effects during that inspection.

Finally, and most significantly, the board finds the Town did make reasonable adjustments when assessing the Property to account for the negative attributes of the finished basement area. These attributes arguably diminished, but did not eliminate, the utility and value of this area to the likely purchaser of a commercial building of this type. The Town's adjustments shown on the assessment-record cards included a 30% reduction in the useable area of the finished basement (before the Town applied its cost factors, including 40% physical depreciation) and an additional 10% functional obsolescence applied to the entire building value (including the finished first floor, rather than just the basement area), which magnified the effect of this 10% factor considerably. (In essence, the Town's adjustments reduced the assessed value by \$34,762, 10% of the replacement cost of the entire building, rather than \$13,705 (rounded), 10% of the replacement cost of the finished basement area after the 30% reduction.) The board finds the combined effect of these adjustments adequately accounts for the diminished utility of the finished basement area and no further abatement is warranted for the tax years under appeal.

For all of these reasons, the appeals are denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") 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

Douglas S. Ricard, Member

Albert S. Shamash, Esq., Member

Certification

I hereby certify copies of the foregoing Decision have been mailed this date, postage prepaid, to: David W. Hess, 68 Pine Street, Hooksett, NH 03106 and Robert P. Mongan, 40 West Brook Street, Manchester, NH 03101, Taxpayer's Representatives; Chairman, Town Council, Town of Hooksett, 35 Main Street, Hooksett, NH 03106; and Mr. Todd Haywood, Granite Hill Municipal Services, P.O. Box 1484, Concord, NH 03302, Contracted Assessing Firm.

Date: May 23, 2011

Anne M. Stelmach, Clerk