

Candace and Stanley Brehm

v.

Town of Chichester

Docket No.: 25072-09PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2009 assessment of \$643,600 (land \$174,900; building \$461,300; features \$7,400) on Map 3/Lot 11, 160 Dover Road, 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 1/Lot 25-6, assessed at \$479,186 and a 5.44 acre vacant lot, Map 1/Lot 25-5, assessed at \$86,300, but the parties stipulated these other properties were proportionally 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) in tax year 2009, the Town simply used the abated assessment ordered by the board for tax year 2008 in their prior appeal (BTLA Docket No. 24351-08PT, the “2008 Appeal,” decided on July 9, 2010), but this value overstates the market value of the Property;
- (2) the Taxpayers contacted a local broker who found three sales of professional office buildings (in Taxpayer Exhibit No. 1), which indicate an “average” price for such buildings is \$55 per square foot; and
- (3) multiplying this price by the 9,297 square feet of effective area in the office building on the Property leads to a market value conclusion [\$511,400 (rounded)] that indicates the Property is entitled to an abatement [\$511,000 times 112.2% level of assessment = \$574,000 (rounded)].

The Town argued the assessment was proper because:

- (1) the Town applied the subsequent year statute (RSA 76:17-c) and the decision in the 2008 Appeal to lower the tax year 2009 assessment on the Property;
- (2) the Town reviewed the information supplied by the Taxpayers (Taxpayer Exhibit No. 1) and concluded it was not entitled to any weight; and
- (3) the Taxpayers failed to meet their burden of proving disproportionality.

The parties agreed the level of assessment in the Town was 112.2% in tax year 2009, the median ratio calculated by the department of revenue administration.

Board’s Rulings

Based on the evidence presented, the board finds the Taxpayers failed to meet their burden of proving disproportionality. The appeal is therefore denied.

Assessments must be based on market value and the level of assessment in the Town.

See RSA 75:1; and Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). To prevail in their

arguments for a tax abatement in this appeal, the Taxpayers had to prove the market value of the Property was less than \$573,600, rounded ($\$643,600 \text{ divided by } 112.2\% = \$573,619$). They argued Taxpayer Exhibit No. 1, the only evidence presented, establishes the market value to be less than \$512,000 (which, as noted above, they estimated by multiplying an “average” price per square foot of \$55 to the 9,297 square feet of area in the office building). The board does not agree with either their conclusion or the simple ‘averaging’ calculation from which it is derived.

Market value findings should be based on credible and persuasive evidence that takes all relevant factors into consideration. See, e.g., Paras v. Town of Portsmouth, 115 N.H. 63, 67-68 (1975). To prove disproportionality, the Taxpayers placed exclusive reliance on the limited information contained in Taxpayer Exhibit No. 1, which describes three commercial properties (located in other municipalities), but does not discuss or make any adjustments for location or other factors that affect market value. They obtained the multiple listing sheets contained in this exhibit simply by contacting a commercial broker (Jody Keeler) who supplied the sheets to them, but did not attend the hearing to testify as to his own knowledge of whether these properties were comparable and/or whether significant adjustments are necessary to estimate a market value for the Property.

The board’s own analysis of Taxpayer Exhibit No. 1 causes it to agree with the Town’s conclusion that this evidence can be given little weight and fails to satisfy the Taxpayers’ burden of proof. For one thing, the Taxpayers failed to provide the assessment-record cards for these properties. Tax 201.33 requires each party to notify the other of any comparable properties at least 14 days prior to the hearing and to submit to the board at the hearing at least two complete copies of the assessment-record cards for each.

The board enacted this rule, which the Taxpayers did not comply with, because comparisons between properties become more questionable and uncertain when there is no opportunity to review the detailed information contained in these cards. In general, the information contained on multiple listing sheets (prepared for marketing purposes) may or may not agree with the information contained on the cards. In the board's experience, the cards are generally more accurate sources of property-specific information since they are the basis for the actual assessments and taxpayers have an incentive for checking their accuracy annually.

Simply averaging sale prices of other properties, the calculation relied on by the Taxpayers, is a questionable method of establishing market value because averaging ignores the unique characteristics of each property. Instead, analyzing, comparing, and weighing sales data and then correlating the most pertinent aspects of the sales to the Property is a much more acceptable method for arriving at a reliable indication of market value. But even if the Taxpayer's averaging calculation (based entirely on the information on the multiple listing sheets and the additional notations made by them) are considered at face value, the board is unpersuaded this provides adequate support for ordering an abatement.

The first comparable was listed for sale at \$565,000 and reportedly sold for \$455,000 in March, 2009. The listing price equates to over \$73 per square foot and the selling price equates to \$59 per square foot, if the Taxpayers' 7,711 square feet assumption is applied. The listing sheet in Taxpayer Exhibit No. 1, however, contains some discrepancies. While stating the building has 7,711 "total" square feet, the sheet states there is 4,636 square feet of office space and 2,318 square feet of "other" space and these numbers do not reconcile to the "total" indicated. (In fact, they add up to 6,954 square feet, approximately 750 square feet, about 10%, less than the stated total of 7,711 used by the Taxpayers.)

More significantly, there is no explanation of the condition or use of the “other” space. It may be storage space, less valuable than office space, or it may be unfinished space, which is also less valuable than rentable office space. If 4,636 square feet of office space is used in the Taxpayer’s calculation, then this commercial property sold for a higher value per square foot (\$455,000 divided by 4,636 = \$98, rounded). Applying this value to the Property (\$98 times 9,297 = \$911,106) results in a value indication (using the Taxpayer’s methodology) that is hundreds of thousands of dollars higher than the value reflected by the assessment on the Property stated above (\$573,619). The board presents this arithmetic exercise to illustrate how unreliable relying solely on information on a listing sheet can be.

The board further notes the first comparable is located in Boscawen (on the road between Concord and Franklin) and is likely to have less traffic, making it less desirable as a commercial property. In the board’s judgment, this location is substantially inferior to the Property, which is on Dover Road at the confluence of Routes 202, 9 and 4. (This major artery connects Concord to the seacoast and, at this point, is a heavy traffic area, with two lanes heading east, one lane heading west and a turning lane in the middle as well.)

The second comparable relied upon by the Taxpayers was a bank “foreclosure” at one-half of the appraised value. It was listed for sale at \$875,000, but, according to the Taxpayers’ notations on the multiple listing sheet, had an “appraisal” (not produced as evidence) for \$600,000 and was ‘taken back’ by the bank for \$300,000. The board notes the building was 100% vacant, according to the multiple listing sheet, which may also have affected its marketability when compared to the Property. The board is unable to place any weight on this comparable except perhaps as a reflection the market for commercial office buildings was challenging in July, 2009.

The listing sheet for the third comparable contains the notation “some renovation needed,” but does not indicate the condition or how much the cost of the renovation would be. The listing also mentions the possibility of “redevelopment” from “office” to “multi-family or office/commercial.” Without more information or a credible analysis of these differences by the Taxpayers, the board is unable to conclude the price at which it “sold” in March, 2008 (\$299,000) is indicative of the market value of the Property in 2009.

For all of these reasons, the board finds the Taxpayers failed to prove an abatement is warranted for tax year 2009. The appeal is therefore 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).

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Candace and Stanley 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: 12/5/11

Anne M. Stelmach, Clerk