

**Jameson Hill**

**v.**

**Town of Hampstead**

**Docket No.: 25084-09PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2009 assessment of \$809,600 (land \$166,300; building \$643,300) on Map 6/Lot 110, 40 Gigante Drive, consisting of two industrial buildings on a 2.23 acre lot (the “Property”). For the reasons stated below, the appeal for abatement is 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.

The Taxpayer argued the assessment was excessive because:

(1) the Property consists of two buildings containing a 4,800 square foot owner-occupied building and a 9,000 square foot multi-tenanted building;

- (2) the Property cannot be developed further and there is a “fire pond” and drainage easement on the Property that serves the whole industrial subdivision, including other buildings and users;
- (3) an independent appraisal prepared by Stephen Bullock (the “Bullock Appraisal,” Taxpayer Exhibit No. 1) estimated the market value of the Property was \$610,000 as of the assessment date (April 1, 2009);
- (4) the Town’s appraiser (Mr. Gerry) reached a much higher value estimate by using a capitalization rate that is flawed and too low, in part because he used survey data for a time period not appropriate for the date of this appeal, and because several of his sale comparables are also flawed (including one that involved the sale of a business as well as real estate); and
- (5) the Bullock Appraisal is the best evidence of market value and the assessment on the Property should be abated based on a market value of \$610,000 adjusted by the level of assessment in the Town.

The Town argued the assessment was proper because:

- (1) the Town performed a statistical update of property values in tax year 2009 which included a review of sales for a 2½ year time period;
- (2) an independent appraisal prepared by Dale M. Gerry, ASA, of Shurtleff Appraisal Associates, Inc. (the “Gerry Appraisal,” Municipality Exhibit C) estimated the market value of the Property was \$825,000 as of the assessment date;
- (3) the Gerry Appraisal is the best evidence and supports the proportionality of the assessment;

(4) the Bullock Appraisal is “misleading” (because of various errors and inconsistencies in his use of both the sales comparison and income approaches to value) and, consequently, the Town moved to dismiss the appeal<sup>1</sup>; and

(5) the Taxpayer failed to meet his burden of proving disproportionality and the appeal should be denied.

The parties agreed the level of assessment in the Town for tax year 2009 was 98%, the median ratio calculated by the department of revenue administration. The parties agreed the board could take official notice of and consider the evidence presented in the W&C Real Estate Trust appeal (BTLA Docket No. 25319-09PT, which was heard on April 18, 2012) involving an abutting industrial property (Map 6, Lot 111 at 30 Gigante Drive).

### **Board’s Rulings**

Based on the evidence presented, the board finds the Taxpayer did not meet his burden of proving disproportionality. The appeal is therefore denied.

As noted above, the Property consists of two industrial buildings on a single lot. The 4,800 square foot building is owner-occupied; the 9,000 square foot building was constructed for use by six separate tenants (with separate tenant bays), but is currently 100% occupied by four tenants. (Gerry Appraisal, p. 1.) There is a fire pond and drainage easement on the Property that decreases the useable area from 2.23 acres to 1.57 acres, more or less. (Id., p. 20). The Property is in the Commercial Zone and it conforms to current zoning requirements. (Id., p. 39.)

The parties recognize market value (adjusted by the level of assessment) is the appropriate benchmark for determining the proportionality of an assessment under New

---

<sup>1</sup> The board denied the Town’s oral motion to dismiss made at the hearing after the presentation of the Taxpayer’s evidence.

Hampshire law. See, e.g., RSA 75:1; and Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003).

In making market value findings, the board considers and weighs all of the evidence, including the respective appraisals of each party, 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. 261, 265 (1994) (the board has the ability, recognized in the statutes, to utilize its "experience, technical competence and specialized knowledge in evaluating the evidence before it").

Further, in making findings where there is conflicting evidence, the board must determine for itself the weight to be given each piece of evidence because "judgment is the touchstone." See, e.g., State of New Hampshire v. Frederick, BTLA Docket No. 23317-07ED (December 3, 2008); cf. Appeal of Public Serv. Co. of N.H., 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974), and Paras v. 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).

The parties submitted appraisals which differ substantially in their conclusions regarding market value as of the April 1, 2009 assessment date: \$610,000 (Bullock Appraisal); and \$825,000 (Gerry Appraisal). Both appraisers used the sales comparison and the income capitalization approaches to value the Property. Mr. Bullock gave the income approach "slightly greater weight" and Mr. Gerry stated he gave substantial weight to both approaches, but slightly more to the sales comparison approach. (See Bullock Appraisal, p. 57; and Gerry Appraisal, pp. 74-75.) On balance, the board finds the sales comparison approach is entitled to more weight, as a buyer of the Property is likely to be a business owner intending to occupy at least a

portion of it and therefore would consider the principle of substitution inherent in this approach.

(The use of the income capitalization approach by these appraisers was reviewed and considered by the board, but was not applied to determine the proportionality of the assessment.<sup>2</sup>)

The Bullock Appraisal used four comparable sales, all of which occurred in 2009 and are in southern New Hampshire, including Hudson, Londonderry, Derry and Manchester. (See Bullock Appraisal, p. 45.) There were many substantive questions raised at the hearing regarding the comparability of the properties used by Mr. Bullock and the credibility of the resulting market value indication arrived at in his sales comparison approach. These questions included, but were not limited to: all of the buildings are significantly older than the Property; three of the four sales were of larger buildings, with two considerably larger at over 42,000 square feet (compared to the Property with 13,800 square feet); one sale was to an abutter and had owner financing (no adjustment made for the abutter sale but an adjustment was made for owner financing, even though Mr. Bullock did not know the financing terms); and one was sold to a church, and therefore is presumed to have a changed and different highest and best use compared to the Property. In addition, as noted above, the Property consists of two buildings on a single lot, while all four of the sales consisted of only one building. Nonetheless, Mr. Bullock made no adjustments for the major differences noted above; nor did his appraisal include any discussion of whether or not such adjustments were even considered.

---

<sup>2</sup> In New Hampshire, the supreme court has recognized that no single method is controlling in all cases, Demoulas v. Town of Salem, 116 N.H. 775, 780 (1976), and the tribunal reviewing the valuation is “not foreclosed from choosing a particular method to the exclusion of the others.” Brickman v. City of Manchester, 119 N.H. 919, 920 (1979). Since the board placed no weight on the income approach, it is not necessary to discuss in any detail how the appraisers differed in applying it and the disagreements between their witnesses, including Duane H. Cowall, another appraiser called to testify by the Taxpayer.

The board also found substantial omissions, mathematical errors and inconsistencies in the Bullock Appraisal's sales comparison approach. These problems, combined with a lack of documentation, many summary statements without any supporting analysis and Mr. Bullock's failure to provide adequate answers to inquiries during his testimony<sup>3</sup>, led the board to conclude it could place no weight on the market value indication arrived at in the Bullock Appraisal.

The Gerry Appraisal utilized five comparable sales which occurred between 2006 and 2011 located in southern New Hampshire, including two in the Town and one each in Salem, Auburn, and Atkinson, with sale prices ranging from \$650,000 to \$1,725,000. (Gerry Appraisal, p. 53.) These comparable properties ranged in size from 10,100 to 25,480 square feet, bracketing the size of the building on the Property at 13,800 square feet. Mr. Gerry adjusted the comparable sale prices for time, location, size, condition and other physical characteristics.

On balance, the board finds the adjustments were reasonable, consistently applied and generally well supported. The comparable sale properties provided a range of indicated market values from \$58 per square foot to \$73 per square foot.<sup>4</sup> Mr. Gerry reconciled to a value per square foot of \$60 for the Property, which results in a market value indication of \$830,000, rounded. (Id., p. 60.) When the level of assessment is applied, the value conclusion arrived at

---

<sup>3</sup> When asked about deficiencies in his appraisal, specifically questions regarding his use of the comparable sales and income approaches, Mr. Bullock was unable to answer a number of them and tried to excuse the gaps in his answers as follows: "I was doing many reports with a modest fee." Mr. Bullock, as a New Hampshire Certified General Appraiser with an MAI designation, is required to comply with the Uniform Standards of Professional Appraisal Practice ("USPAP"). USPAP allows three reporting options with varying levels of detail: self-contained, summary and restricted use reports. USPAP, however, does not permit an appraiser to limit his scope of work to any extent that may produce a less than professional estimate of market value, regardless of whether a "modest fee" or a larger fee is charged.

<sup>4</sup> Upon review, the board found Comparables 2 and 5 to be the most probative of market value as they are both in close proximity and are similar in size to the Property. (See Gerry Appraisal, p. 53.) The adjusted sale price per square foot of those comparables was \$62 and \$73, which was higher than the more conservative \$60 per square foot utilized by Mr. Gerry.

using the sales comparison approach in the Gerry Appraisal is supportive of the proportionality of the assessment.

For all of these reasons, the appeal is 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

---

Michele E. LeBrun, Chair

---

Albert F. Shamash, Esq., Member

---

Theresa M. Walker, Member

Jameson Hill v. Town of Hampstead

Docket No.: 25084-09PT

Page 8 of 8

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax Consultants, 14 Roy Drive, Hudson, NH 03051, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Hampstead, 11 Main Street, Hampstead, NH 03841; and Municipal Resources, Inc., 295 No. Main Street, Salem, NH 03079, Contracted Assessing Firm.

Date: 8/13/12

---

Anne M. Stelmach, Clerk