

W&C Real Estate Trust

v.

Town of Hampstead

Docket No.: 25319-09PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2009 assessment of \$972,700 (land \$179,500; building \$793,200) on Map 6/Lot 111, 30 Gigante Drive, an industrial building on 3.55 acres (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 is improved with an industrial building (21,440 square feet of gross building area) with a loading dock and two drive-in bays and is occupied by the Taxpayer for its architectural millwork business;

(2) an independent appraisal prepared by Stephen Bullock, as updated and revised (see the “Bullock Appraisal” and the “Updated Bullock Appraisal,” Taxpayer Exhibit Nos. 2 and 3, respectively) estimated the market value of the Property was \$650,000 as of the assessment date (April 1, 2009);

(3) 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 his use of the sales comparison approach is also flawed; and

(4) the Updated Bullock Appraisal is the best evidence of market value and the assessment on the Property should be abated based on a market value of \$650,000 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) the Property has a total of 3,000 square feet of office space in the industrial building and the fire pond is located on the abutting (Jameson Hill) property (see Municipality Exhibit A);

(3) the Bullock Appraisals are “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 appeal¹;

(4) 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 \$965,000 as of the assessment date and is the best evidence and supports the proportionality of the assessment; and

(5) the Taxpayer failed to meet its 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 hearing of this appeal was scheduled for March 28, 2012, the same date as the appeal on the abutting Jameson Hill property (Map 6/Lot 110, 40 Gigante Drive; see BTLA Docket No. 25084-09PT). Due to the length of the Jameson Hill hearing, this appeal was rescheduled for hearing on April 18, 2012 and the parties agreed the board could take official notice of, and consider the evidence presented in, the Jameson Hill appeal. Further, at the April 18, 2012 hearing, the Town withdrew its objection (contained in its April 6, 2012 letter to the board) to the Updated Bullock Appraisal, provided both the original and updated appraisals were introduced as evidence. Consequently, both were admitted as evidence.

Board’s Rulings

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

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

As noted above, the Property consists of an industrial, owner-occupied building. (Bullock Appraisal, p 2.) The Property is in the Commercial (C-2) Zone and its use conforms to zoning requirements. (Gerry Appraisal, pp. 2-3.) There was much testimony at the hearing regarding the location and significance of a fire pond. The board finds, as conceded by Mr. Bullock after extensive questioning, that the fire pond is located on the abutting (Jameson Hill) property rather than on the Property. (Cf. Updated Bullock Appraisal, p. 38.)

The parties recognize market value (adjusted by the level of assessment) is the appropriate benchmark for determining the proportionality of an assessment under New 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 the market value as of the April 1, 2009 assessment date: \$650,000 (Updated Bullock Appraisal, p. 4); and \$965,000 (Gerry Appraisal, p. 68). Both appraisers used the sales comparison and the income capitalization approaches to value the Property. Mr. Bullock gave weight to both approaches to value and reconciled his final opinion of value near the mid-point of his two value indications. (Updated Bullock Appraisal, pp. 64-65.) Mr. Gerry also gave weight to both approaches and reconciled his final opinion of value at the mid-point of his two value indications. (Gerry Appraisal, pp. 67-68.) 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 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.²)

The Bullock Appraisals used three comparable sales, all of which occurred in 2009 and are in southern New Hampshire (Hudson, Londonderry and Manchester). (See, e.g., Updated Bullock Appraisal, p. 52.) There were many substantive questions raised at the hearing regarding the comparability of these 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; all three sales were of larger buildings, with two considerably larger at over 42,000 square feet

² 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.

(compared to the Property with approximately 21,400 square feet³); and 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).

Mr. Bullock made adjustments for “Age/Condition” to all three of his sales. Those adjustments were +20%, +5% and +10%. However, Mr. Bullock could not answer questions regarding the physical condition of the Property and these sales to adequately explain the varying levels of adjustment. (Updated Bullock Appraisal, p. 52 & 55.) Mr. Bullock also made varying (10% and 20%) adjustments to two of the sales for “clear height” without any evidence extracted from the market to indicate adjustments of such magnitude were warranted.

Additionally, Mr. Bullock adjusted the comparable sale properties for “site utility” because he assumed the Property’s utility was inferior due to the fire pond. As noted above, however, during testimony Mr. Bullock conceded the fire pond is located on the abutting (Jameson Hill) property and thus, if anything, it increased the Property’s utility instead of diminishing it.

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,⁴ led the board to conclude

³ Mr. Bullock stated the building on the Property had 21,440 square feet of gross building area (Bullock Appraisal, p. 3) while Mr. Gerry stated it had 21,472 square feet (Gerry Appraisal, p. 1). These differences are quite minor and the board has used the approximate estimate noted above.

⁴ 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.

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 2008 and 2010, located in southern New Hampshire, including one each in Seabrook, Derry and Hampstead and two in Salem, with sale prices ranging from \$650,000 to \$1,725,000. (Gerry Appraisal, p.48.) These comparable properties ranged in size from 12,400 to 31,000 square feet, bracketing the size of the building on the Property at approximately 21,400 square feet. The Gerry Appraisal 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 \$40 per square foot to \$52 per square foot.⁵ Mr. Gerry reconciled to a value per square foot of \$46 for the Property, which results in a market value indication of \$988,000, rounded (see Gerry Appraisal, p. 54). When the level of assessment is applied, the value conclusion arrived at 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

⁵ Upon review, the board found Comparable 5 to be most probative of market value as it is in close proximity to and similar in age to the Property. (See Gerry Appraisal, p. 48.) The adjusted sale price per square foot of that comparable was \$51, which was higher than the more conservative \$46 per square foot utilized by Mr. Gerry.

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

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