

Thomas and Elaine Kondrat

v.

Town of Ossipee

Docket No.: 25594-10PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2010 abated assessment of \$353,300 (land \$42,000; building \$306,400; features \$4,900) on Map 11/Lot 18, 59 Old Mill Road, a single-family home on one acre (the “Property”). For the reasons stated below, the appeal for further abatement 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 board finds the Taxpayers carried this burden.

The Taxpayers, represented by Mr. Kondrat, argued the abated assessment was excessive because:

(1) the Property is located in “Windsock Village,” one of two “aviation communities” in the Town, and has access to a runway but does not have beach rights (to Ossipee Lake);

(2) the house is “unique” as it has no basement or attic and has an attached hangar for a small airplane, but this is a detriment to its market value since it is difficult and more expensive to obtain property insurance;

(3) the Property is overassessed primarily because the Town placed too high a value on the attached hangar and also overassessed the greenhouse and gazebo on the Property; and

(4) the Property had a market value of no more than \$300,000 to \$315,000, based on the two “Comparative Market Analysis” estimates provided to the Town (see Municipality Exhibit A), and the assessment should be further abated to a value in this range.

The Town, represented at the hearing by its new assessor, Todd Haywood, argued the assessment, as abated, was proper because:

(1) the Town has already abated the assessment (from \$356,800 to \$353,300) and has considered all of the information provided by the Taxpayers;

(2) the indicated market value reflected in the assessment is within 10% of the \$315,000 value estimated by the Taxpayers, which is a reasonable margin for evaluating the proportionality of the assessment;

(3) the Town followed consistent assessment practices in arriving at the assessment, including how the hangar, greenhouse and gazebo were assessed; and

(4) the appeal should be denied.

The parties agreed the level of assessment was 102.1% in tax year 2010, the median ratio calculated by the department of revenue administration. During its deliberations, the board determined a view was appropriate and on April 10, 2013 took a view of the Windsock Village neighborhood, including the exterior of the Property and some of the comparable properties testified to during the hearing.

Board's Rulings

Based on the evidence, the board finds the Taxpayers met their burden of proving disproportionality and the assessment on the Property should be abated to \$326,200 for tax year 2010. The appeal is therefore granted for the following reasons.

To determine whether the Taxpayers met their burden of proving disproportionality, the board considered and weighed all of the evidence presented, utilizing its “experience, technical competence and specialized knowledge.” See 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 must employ its statutorily countenanced ability to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it.”) Further, “judgment is the touchstone” in evaluating the credibility and probative value of any appraisal and other evidence presented. See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of 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).

At the hearing, Mr. Kondrat focused his disproportionality arguments on three items: the hangar, gazebo and greenhouse. He submitted photos and gave detailed testimony regarding these items. As noted above, Mr. Haywood represented the Town at the hearing. Other than the information shown on the assessment-record card (“ARC”), he had no knowledge regarding how the prior assessor had determined the 2010 assessment. The board evaluated all of the evidence presented, including the adjustments and calculations shown on the ARCs of the Property and the comparable properties with attached and detached hangars.

While an airplane hangar is a relatively unusual residential amenity, the hangar is essentially a very large garage with a high ceiling and a door opening large enough to accommodate the wingspan of a small, private airplane. In this instance, the hangar is 2,400 square feet in size with an unfinished interior. It is attached to the house via the garage (which has an entrance door to the hangar).

A review of the evidence indicates the assessing contractor previously employed by the Town distinguished attached hangars from detached hangars and estimated the attached hangar on the Property contributed a total of \$95,825 to the total assessed building value in tax year 2010, calculated as the sum of three elements (\$69,691: "Hangar"; \$8,711: "Slab"; and \$17,423: "Attic"). A \$95,825 assessed value for the hangar as a whole equates to \$39.93 per square foot of hangar space and is about 31% of the total depreciated building value of \$306,400.

The board finds, through a review of the ARCs provided by the Town (in Municipality Exhibit B) that this hangar assessed value is disproportional, primarily because it is substantially higher than the assessed values for either attached hangars or detached hangars in the Town when their assessments are compared on a per square foot basis. The Town could have reasonably concluded the market would ascribe more value to an attached hangar (despite the somewhat higher insurance costs referenced by Mr. Kondrat at the hearing), but the relative differences reflected in the assessments are unreasonably high. In other words, there is no evidence before the board that would enable it to find the market would place as much of a value premium on the attached hangar on the Property as indicated by the assessment.

Four examples of assessments of detached hangars in close proximity to the Property are: 63 Old Mill Road (Map 11, Lot 20), with a 2,496 square foot hangar assessed at \$61,000 (\$24.44 per square foot); 3 Red Baron Road (Map 11, Lot 21), with a 2,016 square foot hangar assessed

for \$50,723 (\$25.16 per square foot); 5 Cherokee Lane (Map 11, Lot 23), with a 1,848 square foot hangar assessed for \$34,428 (\$18.62 per square foot); and 9 Cherokee Lane (Map 11, Lot 24), a 2,016 square foot hangar assessed for \$43,114 (\$21.39 per square foot). The contributory assessed values for these four detached hangars range from \$18.62 to \$25.16 per square foot.

Four examples of assessments of attached hangars also in relatively close proximity to the Property are: 19 Red Baron Road (Map 11, Lot 39), with a 2,500 square foot hangar assessed at \$76,489 (\$30.60 per square foot); 16 Cherokee Lane (Map 11, Lot 32), with a 2,880 square foot hangar assessed at \$67,652 (\$27.06 per square foot); 36 Navajo Trail (Map 11, Lot 41), with a 1,200 square foot hangar assessed at \$38,230 (\$31.86 per square foot); and 24 Navajo Trail (Map 11, Lot 45), with a 1,176 square foot hangar assessed at \$31,240 (\$26.56 per square foot). The contributory assessed values for these four attached hangars range from \$26.56 to \$31.86 per square foot.

The board finds this evidence provides a reasonable basis for concluding a proportional assessment of the Property requires an abatement of the assessed value of the attached hangar. Using its judgment and experience, the board finds a value towards the upper end of the range of values for attached hangars, say \$29 per square foot, is warranted. Applying this rounded per square foot estimate to the 2,400 square foot hangar space yields a value (\$69,600) very close to the value (\$69,700, rounded) that results from making two adjustments to the factors applied by the Town on the ARC for the “Hangar” (from 0.4 to 0.3) and the “Attic” space (from 0.1 to 0.05).¹ The board finds the Town should use these adjustments and abate the building value to

¹ The board’s calculations, based on the numbers shown on the ARC, are as follows: 2,400 square feet of Hangar x 0.3 + 2,400 square feet of Attic x 0.05 + 2,400 square feet of Slab x 0.05 = 960 effective square feet x \$74.84 adjusted base rate less 3% depreciation = \$69,691.

\$280,200, rounded [3,860 effective square feet (including hangar space) times \$74.84 adjusted base rate less 3% depreciation = \$280,215.92].

The board further finds the gazebo and the greenhouse were also disproportionately assessed as “features” in tax year 2010 and the “Size adj.” factor shown on the ARC for the gazebo and greenhouse should be reduced from 171 to 100 and from 193 to 100, respectively. The effect of these changes is to abate the total assessment on these two items to \$4,000, rounded, and the overall assessment of the Property to \$326,200 (land \$42,000; building \$280,200; features \$4,000).

The board considered all of the Taxpayers’ arguments for a further abatement before making these findings. For example, the board notes the Town did take into account the lack of beach rights and made a notation on the ARC (“No Bch Rts”) to this effect. Further, the board could not place much weight on the two “Comparative Market Analysis” documents presented by the Taxpayers (included as part of Municipality Exhibit A). Neither of the real estate brokers who prepared these documents are qualified real estate appraisers and neither came to the hearing to testify regarding their respective assumptions and conclusions. In addition, one analysis (prepared by Gerard Constantino) is undated and the other (prepared by Ted Bateman) has a January, 2011 date, some ten months after the assessment date. Notwithstanding these issues, the board finds the limited market data in these analyses provides some corroboration for the board’s finding that the Property was overassessed in tax year 2010.

For all of these reasons, the board finds the Taxpayers met their burden of proving disproportionality and the assessment for tax year 2010 should be abated to \$326,200.

If the taxes have been paid, the amount paid on the value in excess of \$326,200 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.

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

Albert F. Shamash, Esq., Member

Theresa M. Walker, Member

Thomas and Elaine Kondrat v. Town of Ossipee

Docket No.: 25594-10PT

Page 8 of 8

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Thomas and Elaine Kondrat, PO Box 343, West Ossipee, NH 03890 Taxpayers; Chairman, Board of Selectmen, Town of Ossipee, PO Box 67, 55 Main Street, Center Ossipee, NH 03814; and Granite Hill Municipal Services, PO Box 1484, Concord, NH 03302, Contracted Assessing Firm.

Date: May 31, 2013

Anne M. Stelmach, Clerk