

JM Foy Family LLC

v.

City of Manchester

Docket No.: 26221-11PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2011 assessment of \$701,600 (land \$256,000; building \$445,600) on Map 207/Lot 2A, 1889 Elm Street, an office building on 0.45 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. The board finds the Taxpayer failed to prove disproportionality.

The Taxpayer, represented by Jeffrey M. Foy, argued the assessment was excessive because:

(1) the Property is a “Victorian” house converted in the past into an office building occupied by an insurance agency affiliated with the Taxpayer and one tenant;

(2) the 2011 assessment is based on consistently higher “subjective” adjustment factors when compared to other office properties (see Taxpayer Exhibit No. 1) and if the City modified those adjustments to “bring them in line” with other office buildings, the assessed value would be “roughly \$575,000”;

(3) the City did not provide any market value information to support the assessment; and

(4) the assessment should be abated to \$575,000.

The City, represented by the two members of the Board of Assessors (Robert Gagne and Michael Hurley) argued the assessment was proper because:

(1) the Taxpayer purchased the Property in December, 2009 for \$750,000, after it was listed for sale at \$875,000 (see Municipality Exhibit B), and it previously sold in January, 2008 for \$753,000, as shown on the assessment-record card (“ARC”);

(2) after the 2009 purchase, the Taxpayer substantially renovated the Property at a cost of more than \$200,000 (see Municipality Exhibit C);

(3) the Property is located on the corner of Elm Street and Webster Street (also known as Route 3), which is a very desirable “Northend” office location with high traffic counts and very good exposure;

(4) the Property has two curb-cuts (one on Elm Street, one on Webster Street) and has 24 parking spaces compared to far less parking on two of the properties submitted as comparisons by the Taxpayer (1892 Elm Street, which has 12 spaces, and 1850 Elm Street which has no parking spaces on the lot); and

(5) the Taxpayer submitted no market value evidence and the appeal should be denied¹.

The parties did not dispute the level of assessment in the City was 101.5%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence presented, the board finds the Taxpayer failed to meet its burden of proving the Property was disproportionately assessed in tax year 2011. The appeal is therefore denied for the following reasons.

“In an abatement case, the taxpayer has the burden of proving by a preponderance of the evidence that the property at issue was assessed disproportionately to other property in the town.” Appeal of Sokolow, 137 N.H. 642, 643 (1993). Assessments must be based on market value adjusted by the level of assessment in the City. See RSA 75:1; and Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003).

The Taxpayer did not present any credible evidence of the Property's market value. To carry its burden, the Taxpayer should have made a showing of the Property's market value. This value would then have been compared to the Property's assessment and the general level of assessment in the City. See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

Instead of presenting evidence to show the Property had a market value, as of April 1, 2011, of something less than the assessed value (\$701,600) adjusted by the level of assessment (101.5%), the Taxpayer focused on various “factors” assigned to the Property on the ARC. The

¹ At the close of the City's direct evidence, Mr. Robert Gagne, Chairman of the Board of Assessor's, made a motion to dismiss the appeal. The board denies the motion for several reasons. First, the City testified regarding the market value of the Property as well as rebutted the Taxpayer's evidence. Therefore, the board finds it is appropriate to make detailed findings. Secondly, the City's motion is mooted by the board's denial of the appeal.

ARC reflects the computer assisted mass appraisal (“CAMA”) system employed by the City to enumerate factors based on available market data (e.g., site index adjustment, condition factor, land adjusted unit price and building base rate) used to calculate an assessed value for each property in the City.

The Taxpayer assembled some information (in Taxpayer Exhibit No. 1) showing the range of some factors on the ARCs of selected office properties and how the Property was at the high end of this range. For example, the “land adj. unit price” of the properties selected by the Taxpayer range from a low of \$4.88 per square foot to a high of \$12.95 per square foot and the value shown on the ARC for the Property is \$12.95 per square foot. The City did not dispute these assertions but provided credible explanations to explain why these factors and base rates did not result in a disproportional assessment.

One of the City’s assessors (Mr. Gagne) testified the Property’s “SI” (site index) and “C” (condition) factors , both of which impact the land component of the assessment, are at the high end of the range because of the Property’s location at a very desirable intersection, with superior visibility, frontage and exposure relative to the Taxpayer’s comparable properties, is in a zoning district that permits an array of commercial uses (see Municipality Exhibit D) and has more on-site parking than other properties the Taxpayer used in its comparisons (such as 1850 and 1892 Elm Street). Each of these elements would likely have a positive impact on the market value of the Property compared to the properties selected by the Taxpayer.

In any event, the individual components of an assessment shown on an ARC are simply a means to arrive at the end of a proportional assessment. “Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant.” Appeal of Town of Sunapee, 126 N.H.at 217 (1985), quoting Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205

(1899). Thus, simply questioning why the ARC states some factors at the high end of a range does not satisfy a taxpayer's burden of proving the resulting assessment, considered as a whole, is disproportional. See, e.g., Appeal of Walsh, 156 N.H. 347, 356 (2007) ("disproportionality requires a review of the market value of the property in its entirety . . .").

The only market value evidence before the board is the sale price of \$750,000 the Taxpayer paid for the Property in December, 2009 and the previous sale, at a price of \$753,000, in January, 2008. The board has the discretion to evaluate and determine the credibility of the sales price being indicative of market value. See Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). Where it is demonstrated that the sale was an arm's-length transaction, the sale price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988).

The assessed value of \$701,600, when equalized by the 101.5% level of assessment, provides a market value indication of \$691,200, rounded, almost \$60,000 less than the Taxpayer paid when it acquired the Property in December, 2009, approximately sixteen months prior to the date of assessment. Additionally, during 2010, prior to the 2011 assessment date, the Taxpayer spend more than \$200,000 to extensively renovate the Property; these improvements included installation of a central air conditioning system and redesign and renovation of interior spaces, as well as roofing a second story porch. (See the photographs in Municipality Exhibit C.) There was no evidence presented to suggest these improvements would not have each had a value enhancing effect on the Property.

In effect, the Taxpayer made an investment of more than \$950,000 in purchasing and then immediately improving the Property. While costs of improvements do not always result in

a dollar for dollar increase in market value, the board finds the Taxpayer's assertion the Property should be assessed at a value of \$575,000 (about \$375,000 or 40% less than the total \$950,000 investment) is less than credible and is not supported by the evidence presented.

For all 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

Albert F. Shamash, Member

Theresa M. Walker, Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: JM Foy Family LLC, Jeffrey M. Foy, Manager, PO Box 1030, Exeter, NH 03833, Taxpayer; and Chairman, Board of Assessors, City of Manchester, One City Hall Plaza-West Wing, Manchester, NH 03101.

Date: 4/7/14

Anne M. Stelmach, Clerk