

Thomas and Elizabeth Braginetz

v.

City of Claremont

Docket No.: 26530-11PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the tax year 2011 assessments on two multi-family properties (each containing three apartments) on separate lots in the “City”:

(1) Map 107/Lot 243, 53-55 Elm Street (the “Elm Street Property”), a 0.18 acre lot assessed at \$137,000 (land \$16,300; building \$120,700); and

(2) Map 131/Lot 129, 11 Grand Street (the “Grand Street Property”), a 0.50 acre lot assessed at \$188,600 (land \$27,400; building \$161,200).

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 total assessment of their entire estate 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 their entire assessment was higher than the general level of assessment in the municipality. Id. The board finds the Taxpayers failed to prove disproportionality.

The Taxpayers argued each assessment was excessive because:

- (1) the City did not lower assessments on multi-family properties even after the “real estate bubble” (in 2008-09) lowered market values;
- (2) an appraisal of the Elm Street Property by Jay Jungels (the “Jungels Appraisal,” Taxpayer Exhibit No. 1) estimates a \$95,000 market value as of August 10, 2011, approximately 30% below the City’s assessment; and
- (3) as stated in the appeal document, the assessment on the Elm Street Property should be abated to the \$95,000 value estimated in the Jungels Appraisal and the Grand Street Property should also be abated by approximately 30% to \$132,000.

The City argued the assessments were proper because:

- (1) the City performed a revaluation in 2009 to establish assessments based on qualified sales;
- (2) the market value estimated in the Jungels Appraisal is not credible because it utilized comparable sale properties that were not “qualified” sales and it was prepared for financing purposes;
- (3) even if the Jungels Appraisal of the Elm Street Property is considered as evidence, the adjusted sale prices for the comparable sales range from \$85,000 to \$140,000, which is supportive of the proportionality of the assessment; and
- (4) the appeal should be denied.

The parties did not dispute that the level of assessment in tax year 2011 was 106.8%, 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 their entire estate (consisting of the Elm Street Property and the Grand Street

Property) was disproportionately assessed in tax year 2011. The appeal is therefore denied for the following reasons.

As prescribed in RSA 75:1, ad valorem assessments must be based on market value.

Proportionality is determined by arriving at a reasonable estimate of market value adjusted by the level of assessment in the municipality. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003).); see also Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

It is well established that no abatement can be granted unless the Taxpayers' entire estate is disproportionately assessed. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985):

When a taxpayer challenges an assessment on a given parcel of land, the board must consider any given parcel unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the assessment of property generally in the town. Bemis etc. Bag Co. v. Claremont, 98 N.H. 446, 449, 102 A.2d 512, 516 (1954). "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant." Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205, 46 A. 470, 473 (1899) (citations omitted).

When a taxpayer owns two parcels, then, a request for abatement on the first will always require consideration of the assessment on the second.

Accord, Appeal of City of Lebanon, 161 N.H. 463, 468-69 (2011); cf. DLC Investments v. City of Claremont, BTLA Docket Nos. 25184-09PT and 25561-10PT (February 27, 2013). In order to prevail in this appeal, the Taxpayers had the burden of proving the market value of their entire estate in the City (both the Elm Street Property and the Grand Street Property) was less than \$304,900, rounded (\$325,600 total assessment divided by the 106.8% level of assessment).

The Taxpayers presented no evidence regarding the market value of the Grand Street Property. As noted above, they simply asserted that since the estimated market value of the Elm Street Property in the Jungels Appraisal (\$95,000) was approximately 30% lower than that assessment (\$137,000), each property was overassessed by 30%. These assertions, however, do not satisfy the Taxpayers' burden of proving the disproportionality of their entire estate with credible market value evidence.

The Jungels Appraisal focused entirely on the Elm Street Property and was prepared for refinancing purposes. The City reviewed the appraisal and noted that only one of the five comparable sales relied on by Mr. Jungels (47 Walnut Street¹) was a "qualified" sale (assumed to be an arm's-length sale), and the four other comparable sales were "unqualified" (confirmed by his mention they were foreclosed upon, owned by a lending institution or the result of a "short" sale). Further, two additional comparable sales mentioned in the Jungels Appraisal were not sales, but were merely listings.

Mr. Jungels, if he had attended the hearing and been called to testify by the Taxpayers, might have been able to explain his methodology and his choice of sale and listing comparables to make them more credible and help satisfy the Taxpayers' burden of proving disproportionality. The City argued the Jungels Appraisal was not credible and disagreed with the Taxpayers' assertion that Mr. Jungels relied almost entirely on distressed property sales because these were the "market" (the predominant type of sale occurring in the City after the real

¹ 47 Walnut Street, which sold for \$110,000 in March, 2010 after being on the market for over 2 ½ years, has approximately 50% less building living area (3,072 square feet compared to 4,487 square feet for the Elm Street Property). In his appraisal, Mr. Jungels made only a \$15,700 positive adjustment for living area (roughly 14%), along with several negative adjustment for other factors, in arriving at an adjusted value of \$106,800 for this comparable. The assessed value of 47 Walnut Street (\$135,600) is quite close to the assessed value of the Elm Street Property (\$137,000). Without more probative evidence, the board is unable to find this one qualified sale more than one year prior to the April 1, 2011 assessment date is supportive of a finding that the 2011 assessment on the Elm Street Property was disproportional.

estate “bubble” and economic decline). There was no evidence presented that would allow the board to find Mr. Jungels’ choice of distressed sales as comparables was reasonable.

Mr. Jungels employed both the sales comparison and income approaches, but gave more weight to the sales comparison approach. He reconciled to an estimated value of \$95,000 based on a \$92,000 estimate using the sales comparison approach and a \$104,060 estimate using the income approach. In his sales comparison approach, he estimated market values in the City were falling at the rate of 0.5% per month. Since his value estimate for the Elm Street Property is as of August 10, 2011, approximately 4 ½ months after the assessment date, his reconciled value conclusion would likely have been higher (\$101,500, rounded) if he had estimated a value as of the April 1, 2011 assessment date.

In his income approach, Mr. Jungels relied on a gross rent multiplier (“GRM”) calculation, setting this multiplier at “43.00” primarily because he calculated a GRM of “43.14” for 47 Walnut Street, his only qualified sale comparable. Multiplying his GRM estimate by his gross monthly estimate (\$2,420) led him to arrive at a \$104,060 indication of value. (See Taxpayer Exhibit No. 1, p. 3.)

On the evidence presented, the board finds this value indication is not reliable for several reasons. First, Mr. Jungels focused on only 47 Walnut Street (smaller in size and described further in fn. 1). He gave little or no consideration to the wide range of GRMs (23.74 to 77.86) calculated for his other comparables, a range that should have caused him to doubt and reconsider use of a GRM method to arrive at a reliable indication of value. Second, a critical factor in using the GRM method is developing a credible estimate of market rent. Mr. Jungels concluded the actual rents stated by the Taxpayers were at market (based on five rent comparables), but a review of these comparables raises questions regarding this conclusion.

Specifically, all five rent comparables used by Mr. Jungels are significantly smaller than the Elm Street Property, which has 4,584 square feet compared to sizes ranging from 2,293 to 3,218 square feet. In the board's experience, larger units are likely to command higher rents, which generally results in higher market values. Underestimation of market rent can therefore result in understatement of market value using the income approach.

Further doubts arise when the income and expense data contained in the Jungels Appraisal is considered more closely. Mr. Jungels noted in his appraisal that investors who purchase this type of property are concerned primarily with income generation potential rather than other factors (such as the appearance of each unit or the size of the lot). After adjusting for vacancy and operating expenses, Mr. Jungels calculated the Elm Street Property generated "\$1,887.92" in monthly income. Annualizing and capitalizing this calculated income stream (at a ten percent rate) yields a capitalized value (\$226,550, rounded), well in excess of Mr. Jungels' income approach estimate of \$104,060 (using the GRM metric). To reach Mr. Jungel's value conclusion, an investor would have to demand a rate of return of between 21 and 22 percent, which the board finds is excessively high and was not shown to be realistic.

For all of these reasons, the board finds Mr. Jungels' value conclusion using the income approach lacks credible support. His estimate simply does not meet the 'sanity test' of how a reasonably prudent investor is likely to value a property of that type in that market.

The City, for its part, presented assessment and sales data for other multi-family properties in Municipality Exhibit A and the Taxpayers did not dispute this evidence. The City maintained it followed a consistent methodology in assessing such properties and a consistent assessment methodology is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982). The City's sales data included 232 North

Street, which sold in November, 2011 for \$170,000, a property with one more rental apartment but in a much smaller building (3,142 square feet compared to 4,487 square feet for the Elm Street Property). The board finds this sale lends support to the proportionality of the assessment.

There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality's general level of assessment, represents a reasonable measure of a proportional tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

For all of these reasons, the board finds the Taxpayers failed to prove disproportionality. 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).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Albert F. Shamash, Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Thomas and Elizabeth Braginetz, PO Box 395, Meriden, NH 03770, Taxpayers; and Chairman, Board of Assessors, City of Claremont, 58 Opera House Square, Claremont, NH 03743.

Date: 6/13/14

Anne M. Stelmach, Clerk