

Albert and Sandra Hogenmiller

v.

Town of Hinsdale

Docket No.: 26691-12PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2012 assessment of \$230,800 (land \$37,100; building \$193,700) on Map 9/Lot 5, a multi-family home, barn and storage units on 3.12 acres (the “Property”). For the reasons stated below, the appeal for 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 Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) the Property was purchased in 1995 for \$135,000 and the taxes have increased 71% in the 17 years since the purchase;

- (2) an appraisal performed by Lorenzo Vigil (the “Vigil Appraisal”) estimated the value of the Property to be \$180,000 as of February 12, 2004 (Taxpayer Exhibit #1, section E);
- (3) a July 17, 2011, appraisal performed by W. M. Borchers of Powers, Smith & Associates (“Borchers Appraisal,” Taxpayer Exhibit #3, cf., Taxpayer Exhibit #1, section F) estimated the value of the Property to be \$184,000 based on the sales comparison approach; Mr. Borchers arrived at an indicated value by the income approach of \$200,800; however, he indicated the gross rent multiplier (“GRM”) he utilized “is not considered reliable because it relies on gross income instead of net operating income;”
- (4) the Property, adjacent to the Town transfer station, has 15 rooms and an attic and consists of three units, two of which are leased (for \$950 and \$1,000 per month including utilities) and the third is owner-occupied, and 20 (8 feet by 12 feet) storage units in the barn are leased for \$45 per month each;
- (5) the apartments are leased with all utilities and cable television included in the rent (which, because of the home’s age cannot be separated) and the single-bedroom unit also includes all furnishings;
- (6) there are two “ruined” silos, a barn cellar hole and an old corn crib which negatively impact the market value of the Property; and
- (7) the market value of the Property as of April 1, 2012 is \$184,000 based on the two appraisals.

The Town recommended abating the assessment to \$220,000 and argued this value was proper because:

- (1) the Property is considered more commercial than residential given its use;
- (2) a 10% reduction to the land value has been applied to account for the negative impact of the adjacent transfer station;

(3) the Taxpayers submitted an income and expense statement to the Town and the Town relied on this information in valuing the Property; and

(4) based on a review of the information provided by the Taxpayers, the assessment should be abated to \$220,000.

The parties agreed the level of assessment in the Town was 100.6% in tax year 2013, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence presented, the board finds the Taxpayers met their burden of proving the Property was disproportionally assessed in 2013 and this appeal is therefore granted. Using its judgment and experience, the board finds the assessment on the Property should be abated to \$210,000 in tax year 2013 for the following reasons.

In determining the proportionality of an assessment, the board applies its “experience, technical competence and specialized knowledge” to the evidence presented. 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, “judgment is the touchstone.” See 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, 115 N.H. at 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

Based on an analysis of the evidence submitted at the hearing and utilizing its judgment and experience, the board finds the highest and best use of the Property is continuation of its

existing use as an owner-occupied one bedroom apartment with two rental apartments and 20 storage units in the barn.

The board gave no weight to the Vigil Appraisal as its effective date was February, 2004, eight years prior to the date of assessment.

The board has reviewed the July, 2011 Borchers Appraisal and finds the comparable sales used by Mr. Borchers to be somewhat reasonable; however, given the board's determination of the highest and best use of the Property to be income producing, the income data on page 2 of the Borchers Appraisal was given the most weight. Mr. Borchers reviewed rental income of three comparable properties and concluded the Taxpayers' actual rents for the one and two bedroom apartments were "in line with market rents" and determined market rent for the Taxpayers' unit to be \$1,000 per month including utilities. Further, he noted "all three units are in overall better than average condition with no items of deferred maintenance." However, Mr. Borchers did not consider the income generated by the storage units in the barn in arriving at an indicated value of \$200,600.

The board considered the contributory value of the barn's income and in doing so has reviewed the "Income Valuation" portion of the assessment-record card and the Taxpayers' completed "Form M Income and Expense Questionnaire" submitted by the Town. (See Municipality Exhibit A.) Based on the totality of the evidence submitted, the board finds the Town underestimated the expenses associated with the Property. Correction of this understatement, but utilizing the remainder of the Town's methodology, results in an overall value of \$210,000. The board finds this assessment is reasonable considering the unique characteristics of the Property. In arriving at the value of a property, 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 proportionality and the resulting tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979). Although the right to an abatement and the board's powers in these proceedings are dictated by statute, the statutory authority contained in RSA 76:16-a to "make such order thereon as justice requires" confers broad discretion and equitable powers to abate taxes. Cf. Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003).

The Taxpayers argued their taxes had significantly increased since the purchase of the Property in 1995. The amount of property taxes paid by the Taxpayers was determined by two factors: (1) the Property's assessment; and (2) the municipality's budget. See generally International Association of Assessing Officers, Property Assessment Valuation, pp. 4-6 (1977). The board's jurisdiction is limited to the first factor, i.e., the board decides if the Property was overassessed, resulting in the Taxpayers paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See Bretton Woods Co. v. Town of Carroll, 84 N.H. 428, 430-31 (1930) (abatement may be granted for disproportionality but not for issues relating to town expenditures); see also Appeal of Land Acquisition, 145 N.H. 492, 494 (2000) (board's jurisdiction and authority limited by statute).

If the taxes have been paid, the amount paid on the value in excess of \$210,000 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

Michele E. LeBrun, Chair

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Albert & Sandra Hogenmiller, 218 Northfield Road, Hinsdale, NH 03451, Taxpayers; Chairman, Board of Selectmen, Town of Hinsdale, PO Box 13, Hinsdale, NH 03451; and Vision Government Solutions, Attn: Mike Tarello, 44 Barefoot Road, 2nd Floor, Northborough, MA 01532, Contracted Assessing Firm.

Date: 8/19/15

Anne M. Stelmach, Clerk