

Patchwork Realty, LLC

v.

Town of Hinsdale

Docket No.: 26999-12PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2012 abated assessment of \$290,000 (land \$95,300; building \$194,700) on Map 47/Lot 11, 13 Main Street, a commercial building on 0.14 acres (the “Property”). The Taxpayer also owns, but did not appeal, the assessments on seven additional lots owned in the Town; the parties did not dispute the proportionality of those assessments. For the reasons stated below, the appeal for abatement on the Property 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 Edwin O. Smith, LLC member, argued the abated assessment was still excessive because:

- (1) when the assessments on other commercial properties in the Town are compared to the Property, some properties with newer construction had higher depreciation applied to their buildings and therefore the depreciation recognized by the Town on the Property is too low;
- (2) the land value is too high because, even though the Property has limited onsite parking (for two spaces), other properties have more parking;
- (3) the center of the Town has shifted to Brattleboro Road because of the Wal-Mart store and related properties, lessening the desirability of the Main Street location;
- (4) except for one newer building on Brattleboro Road, the Property has the highest assessed value per square foot (\$43) in the Town; and
- (5) based on averaging the square foot value of other commercial properties, the assessment on the Property should be abated to "\$244,088."

The Town argued the assessment was proper because:

- (1) as part of the revaluation performed in tax year 2012, the Town requested revenue and expense information from the Taxpayer on the Property several times, but did not receive it, and therefore the Town used other means to assess the value of the Property;
- (2) as indicated in Municipality Exhibit A, the abated assessment is supported by the income approach, using average rents and expenses from data provided by other property owners in response to the Town's requests;
- (3) the Town inspected the Property and reduced the initial assessment (from \$379,000 to \$342,400) and then further reduced the assessment (to \$290,000) in response to the Taxpayer's abatement application;

(4) the Brattleboro Road properties referenced by the Taxpayer are of newer construction and have other differences compared to the Property; and

(5) the appeal for further abatement should be denied.

The parties agreed the level of assessment in the Town was 100.6 percent in tax year 2012, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed. The appeal is therefore denied for the following reasons.

In New Hampshire, the law requires assessments to be based on market value adjusted by the level of assessment.¹ See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). The Taxpayer did not present any market value information to support a lower abatement. Instead, the Taxpayer relied on comparisons of the building and land assessments on the Property to the assessments on other commercial properties located on Main Street and on Brattleboro Road.

The board considered the Taxpayer's arguments regarding the location of the Property on Main Street rather than nearer the Wal-Mart on Brattleboro Road. While the market may recognize location differences, comparing assessments between the two locations does not satisfy the Taxpayer's burden of proving disproportionality. Many factors go into the determination of market value. Location is simply one of them and can be countered by other factors, such as a quality, long term tenant.

As noted by the Town, the Property has a long-term, stable tenant (the U.S. Post Office) which generates a steady rental income, along with apartments that also generate income. The

¹ For tax year 2012, the level of assessment in the Town was very close to 100% and so little or no adjustment for this factor is required.

Taxpayer did not disclose any rental income or expense information when the Town asked for it as part of the process of arriving at an assessment or at the hearing of this appeal. After performing an interior inspection, the Town did abate the assessment substantially (from an initial assessment of \$379,000 to a final assessment of \$290,000).

Nonetheless, the Taxpayer asserted the assessment should be further abated to “\$244,088” based on an average assessed value per square foot computation based on other property assessments. The board does not agree that simply averaging such assessments is sufficient to meet the Taxpayer’s burden of proving disproportionality. The board has consistently held that simply averaging the assessments on other properties “is not a reliable method of meeting the Taxpayer’s burden of proving disproportionality. [Citation omitted.]” See, e.g., Stanford v. Town of Gilmanton, BTLA Docket No. 21114-04PT (September 21, 2007).

The Town noted values per square foot can differ for various reasons, including the extent of “fit-ups” and building sizes. In arriving at a reasonable estimate of market value, all relevant factors must be considered. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

The Town pointed out the Taxpayer listed the Property for sale with a real estate broker in July, 2012 (close to the April 1, 2012 assessment date) at an asking price (\$449,000), well above the equalized value of the assessment under appeal (\$290,000 divided by 100.6% level of assessment = \$288,300, rounded). Mr. Smith stated the Taxpayer has not yet received any offers to purchase the Property, but this asking price is somewhat probative of, at the very least, Mr. Smith’s own opinion of the value of the Property, especially given his testimony at the hearing regarding his experience in the field of commercial real estate and its management.

For all of these reasons, the board finds the Taxpayer failed to meet its burden of proving the abated assessment of \$290,000 for tax year 2012 was disproportional. 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

Michele E. LeBrun, Chair

Albert F. Shamash, Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Edwin O. Smith, Patchwork Realty, LLC, PO Box 26, Hinsdale, NH 03451, Representative for the Taxpayer; 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: 9/5/14

Anne M. Stelmach, Clerk