

William Copp, Jr. and Mellisa L. Copp

v.

Town of Fremont

Docket No.: 27044-12PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2012 abated assessment of \$277,300 (land \$47,000; building \$230,300) on Map 02/Lot 164/002, 518 and 522 Main Street, consisting of a single family home and commercial building on one acre (the “Property”). 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 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 failed to prove disproportionality.

The Taxpayers argued the abated assessment was still excessive because:

(1) the one acre lot has a retail building and a house and the house is “landlocked,” with the only access being over a neighboring property;

(2) the Town has not justified the increases in the assessed value of the Property from prior years; and

(3) the assessment should be abated to \$90,000 based on the appraisal submitted (the “George Appraisal” Taxpayer Exhibit No. 2).

The Town argued the assessment, as abated, was proper because:

(1) the assessments resulted from statistical updates performed in 2005 and 2010;

(2) the Property has frontage on Route 107 and the retail building has access, parking and a driveway, even if the house (on the other side of a body of water in the middle of the lot) does not;

(3) generally, a lot with two uses (such as residential and retail) result in a positive impact on market value (even though the Town did not increase the land value for this feature);

(4) the Town performed updates of values in 2005 and 2010 and followed a consistent methodology in assessing this Property and other comparable properties;

(5) the Taxpayers have not presented any credible market evidence that the Property was overassessed in tax year 2012; and

(6) the appeal should be denied.

The parties did not dispute the level of assessment was 108.7%, the median ratio calculated by the department of revenue administration.

Board’s Rulings

Based on the evidence, the board finds the Taxpayers failed to meet their burden of proving disproportionality. The appeal is therefore denied for the following reasons.

Assessments must be based on market value adjusted by the level of assessment in the Town. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). In

order to prevail in this appeal, the Taxpayers have the burden of proving the market value of the Property as of April 1, 2012 was materially less than the \$255,100 equalized value of the abated assessment. (\$277,300 abated assessment divided by 108.7% level of assessment = \$255,100, rounded.) The board finds the Taxpayers failed to satisfy this burden for the following reasons.

The Property is somewhat unique in several respects. The lot has two existing uses (a retail ice cream parlor building rented to a third party in the front (and a single family dwelling in the rear occupied by the Taxpayers). The retail building rents for \$13,800 per year and has adequate parking (for about 20 cars). One of the Taxpayers (Mr. Copp) acquired the Property from his family. The single family house sits in the back of the Property and, because of wetlands, access to house is over a neighboring property (owned by his grandmother) with no recorded right of way or "legal driveway." This led him to argue the Property is "landlocked," a characterization disputed by the Town's contract assessor who contended other means of access were feasible.

After considering the disputed access issue, the board is unable to find the Property had a market value of only \$90,000, the value stated in the George Appraisal. Ms. George did not attend the hearing and therefore was not available to answer questions from the Town or the board regarding her assumptions and methodology. She did not find any comparables that were "landlocked" and instead used three sales to which she made deductions equal to the sale prices (\$232,300, \$205,000 and \$225,000) to calculate the house had a negative value of \$20,000. She then added an estimated value of \$110,000 for the retail building to arrive at her overall value estimate of \$90,000 for the Property as a whole.

This estimate is not a reasonable indicator of value. Mr. Copp testified he has refinanced the Property several times and that it has a present mortgage of about \$170,000 which is well

above the \$90,000 estimate in the George Appraisal, even before taking into consideration that properties are conventionally financed for no more than 80% of their estimated market value.

In addition, the board does not find it credible that the house does not add a positive contributory value to the Property (in contrast to the negative \$20,000 ascribed by Ms. George). The photographs in the appraisal show the house to be an attractive cape style home of good size (1,852 square feet of gross living area) with three bedrooms and two baths. The three comparables selected by Ms. George are all smaller in size and sold in a value range of \$205,000 to \$232,300.

The board finds the access issue is likely to impact the value of the residence to some degree, but not to the drastic extent assumed by Ms. George in her appraisal. A more reasonable house value estimate (say \$145,000), when added to the value she estimates for the retail building (\$110,000), is supportive of the proportionality of the assessment.

The Town, for its part, made a 25% negative adjustment to the land value shown on the assessment-record card to account for access and topography and no evidence was presented to allow the board to find a larger adjustment was warranted for tax year 2012. The Town's contract assessor testified the Property was assessed using the same methodology as for other properties within the Town. This testimony is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

For all of these reasons, the board finds the Taxpayers did not meet their burden of proving the Property was disproportionately assessed in tax year 2012. 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

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: William Copp, Jr. and Mellisa L. Copp, 522 Main Street, Fremont, NH 03044, Taxpayers; Chairman, Board of Selectmen, Town of Fremont, PO Box 120, Fremont, NH 03044; and Municipal Resources, Inc., 295 No. Main Street, Salem, NH 03079, Contracted Assessing Firm.

Date: August 22, 2014

Anne M. Stelmach, Clerk