New England Marketing Associates
v.
City of Laconia

Docket No. 3326-86

DECISION

A hearing in this appeal was held, as scheduled, on February 2, 1990. The Taxpayers were represented by Robert M. Cove, Vice President-General Counsel for New England Marketing Associates (hereafter N.E.M.A.), Patrick A. Basile, President, N.E.M.A., Daniel Comeau, General Manager of Lakes Region Management Co., and Tony Cangiano, Sales Director, N.E.M.A. The City was not represented.

The property consists of 34 condominium units marketed as time-share units, located at Weirs Beach. The Taxpayer appeals, pursuant to RSA 76:16-a, the assessment of $1,999,200 (34 units x $58,800) placed on these 34 condominium units.

Neither party challenged the Department of Revenue Administration's equalization ratio of 45 percent for the 1986 tax year for the City of Laconia. Based on that ratio, the Taxpayer's assessment equates to a market value per unit of $130,667, or $4,442,666 in total.

The Taxpayer argued that the City improperly interpreted RSA 356-B:4 as amended effective April 1, 1986, by utilizing the list price of proposed sales of a time-share interest "as the sole and exclusive basis for the valuation of the underlying condominium unit." Further, it argued that the resulting

system of assessing "condominium units which have been time shared at two to three times the assessments on identical units in the same building which have not been time shared" is inequitable.

The Taxpayers submitted Judge Robert B. Dickson's decision of The Summit v. City of Laconia, Case #E-87-0015, as precedent and argued that it should be used as the basis for abating the 1986 taxes, just as the City had used it for abating the 1988 and 1989 taxes.

The Taxpayer's appeal is based on the Constitution of New Hampshire, Part 2, Article 5, which states in part:

> And further, full power and authority are hereby given and granted to the said general court, from time to time . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state; and upon all estates within the same . . . .

and RSA 75:1 (supp) which states:

> Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the assessed value of all other taxable estate bears to its true value. Boston & Maine R. R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450."

Bemis v. Claremont, 98 N.H. 446, 452 (1954).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v.

City of Concord, 115 N.H. 131 (1975) , Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H. 187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

Further, the statute addressing the taxation of condominium units in which time-share interests have been created was as follows for April 1, 1986:

> **356-A:9-c Taxation.** Each lot, parcel, or unit in which time sharing interests, as defined in RSA 356-A:l, XVI, have been created shall be valued for purposes of real property taxation as if such lot, parcel, or unit were owned by a single taxpayer. The total cumulative purchase price paid for time sharing interests in any such lot, parcel, or unit shall not be determinative of its assessed value. The price paid for a time sharing interest may be considered by assessing officials as a factor in determining the assessed value of any such lot, parcel, or unit, provided that appropriate adjustments are made to exclude from consideration any non-real property interests. No taxes shall be assessed against the individual owner of a time sharing interest but shall be assessed against the record owner of such lot, parcel, or unit; the owners' association; trustee; or managing agent, as appropriate.

In reviewing the history of the property and the applicable statutes, the Board notes that this property was part of an appeal for the 1982 and 1983 tax years to this Board and subsequently to the New Hampshire Supreme Court, prior to the revision of RSA 356-A:9-c by the Legislature, effective April 1,

1986. In that appeal the Court held that the Town and this Board lacked statutory authority to assess the property as anything other than wholly-owned condominium units. Based on this decision the Town and Taxpayer settled the 1984 and 1985 tax years and withdrew their appeals to the Board for those years.

There was no appeal filed with this Board for the 1987 tax year, contrary to the Taxpayer's memorandum (Taxpayer's Exhibit 1), nor was there any testimony or evidence as to how the 1987 assessments were resolved locally.

The evidence submitted by the Taxpayer indicates that the 1988 and 1989 tax years were settled based on the rulings of Judge Robert B. Dickson in a similar case, E-87-0015, The Summit v. City of Laconia.

Further, the Board notes that RSA 356-A:9-c (1989 supp.) was amended in 1989 by removing the provision that the price paid for time-share interests could be considered in assessing the condominium units as long as proper adjustments are made for non-real estate interests.

Therefore, the only appeal before this Board is for the 1986 tax year and is a case of first impression--and most likely of last impression--in relation to RSA 356-A:9-c (1986 supp.).

The Taxpayer would have the Board order an abatement for the 1986 tax year pursuant to Judge Dickson's order (hereafter "Dickson's formula"), or in the alternative, find the assessments to be the equalized market value of the condominiums as if owned by one individual.

"Dickson's formula" essentially determines a net calculated market value of a unit by the addition of a weighted average of that proportion of a unit that has not been time shared, with the cumulative value of the portion (number of weeks) of the unit that has been time shared after that cumulative value has been reduced 40 percent for developer marketing costs, 10 percent for furnishings, and 15 percent for non-real estate benefits.

The Board finds, based on the testimony and evidence in this case, that "Dickson's formula", while considering appropriate factors in arriving at a value, would result in illogical results by giving too much weight to deductions in marketing costs and non-real estate benefits.

The Board finds, based on three sales of individually owned condominium units, that a reasonable 1986 market value of a condominium unit would be $62,500 and that all the condominium units, whether individually owned or time shared, are physically identical and enjoy the same amenities. Using the "Dickson formula" would result in varying calculated market values of 38 percent to 76 percent of the market value of individually owned units. If this were true, one has to ask why the developer, as was testified to, actually repurchased some individually owned units to resell as time-share units. Such a result defies common sense, let alone the concept of highest and best use.

". . . When one is estimating market value, it is necessary to determine which of the competing uses is the highest and best use.

"Highest and best use may be defined as that use which will generate the highest net return to the property over a period of time." Property Assessment Valuation, International Association of Assessing Officers, 1977, p. 22.

The Board finds several factors in "Dickson's formula" that contribute to this illogical conclusion. First, the cumulative addition of time-share interests was not time trended to the assessment date. Most of the sales of interests occurred during the years 1978-1982, well before the assessment date of 1986. Those sales that did occur near the assessment date appeared to be

the "remnant" weeks during less desirable times of the year. Second, the deduction of 40 percent of the gross cumulative sale prices for market costs appears to be excessive to this Board. While there is no doubt that the costs associated with marketing a unit to 50 individuals is higher than to one individual, the Board finds the deduction of nearly all, if indeed not all, such costs as not reflective of market value. In analyzing sales to determine market value of all other types of property (land, residences, commercial, etc.), brokerage fees, advertising costs, etc., are not deducted from the sale price--they are part of the market. Lastly, the deduction of 15 percent for non-real estate benefits is excessive. The testimony indicated that most benefits and services were paid for on a continuing basis in association fees, subscription fees, cleaning fees, etc. From the testimony the Board was only able to identify a transferable value of the developers access to an international time-share exchange service.

The Board next must decide if there is conclusive evidence to support a value higher than the equalized market value of a unit as individually owned.

The Board finds that very few of the remaining time-share interests owned by the developer have sold (approximately 50 weeks remain with 1,650 having been sold) and there was testimony that there have been very few resales of interests. The Board also finds, based on its general knowledge and experience of the real estate market, that the time-share method of marketing was no longer as attractive in 1986 as it was in the four to eight years prior to that.

Lacking any evidence to support the City's higher assessment of $58,800, the Board rules that the highest and best use in 1986 was as individually owned units having a market value of $62,500 per unit.

The Board rules that the equalization ratio, as determined by the Department of Revenue Administration for tax year 1986, was 45 percent.

Therefore the Board rules the proper assessment for 1986 is $956,250 ($62,500 x 34 units x .45).

If the taxes have been paid, the amount paid on the value in excess of $956,250 is to be refunded with interest at six percent from date of payment to date of refund.

The Board rules on the Taxpayer's request for findings of facts and rulings of law as follows:

Findings of Facts

1. Grant.
2. Deny.
3. Deny.
4. Neither grant nor deny.
5. Neither grant nor deny.
6. Neither grant nor deny.
7. Grant.
8. Deny.
9. Neither grant nor deny.
10. Grant.
11. Neither grant nor deny.
12. Grant.
13. Grant as to tax year 1986.
14. Deny.

Rulings of Law

A. Deny.
B. Grant.
C. Grant.

SO ORDERED.

March 29, 1990

BOARD OF TAX AND LAND APPEALS

Anne S. Richmond, Chairman

George Twigg, III

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within Decision have been mailed this date, postage prepaid, to Patrick A. Basile, President, N.E.M.A., and to the Chairman, Board of Assessors, City of Laconia.

Michele E. LeBrun, Clerk

March 29, 1990

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