

Dorothy M. Diorio

v.

City of Laconia

Docket Nos.: 19793-02PT and 20298-03PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” tax year 2002 and 2003 assessments of \$472,700 on Map/Lot 154-254-6.001 (“Lot 001”) and \$457,300 on Map/Lot 154-254-6.002 (“Lot 002”) (collectively, the “Property”). The Property consists of two “condex” residential units on Lake Winnepesaukee. For the reasons stated below, the appeals for abatements are granted.

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 Taxpayer carried this burden.

The Taxpayer argued the assessments were excessive because:

- (1) a June 30, 2004 appraisal completed on behalf of the City by Thomas Stecher of Loon Point Appraisal Services, LLC (“Stecher Appraisal”) estimated the total market value of the Property as of April 1, 2002 at \$623,000 (\$313,000 + \$310,000), well below the assessed values;
- (2) an analysis by the Taxpayer’s representative (David Irwin) supports this estimate;
- (3) the “neighborhood” and other adjustments in the City’s analysis (Municipality Exhibit A) cannot be supported; and
- (4) the Property is entitled to an abatement, based upon its market value and the level of assessment in the City

At the hearing, the City argued:

- (1) the Stecher Appraisal was rejected by the City and should be given no weight;
- (2) the City’s “neighborhood” adjustment encompasses more than just location, including water views and other amenities, and all adjustments are based upon market analyses by its prior assessors;
- (3) the Property has a substantial, finished, walk-out basement that adds value; and
- (4) the Taxpayer failed to sustain her burden of proof.

At the close of the May 24, 2005 hearing, the parties stipulated that, since the assessments were the same for 2002 and 2003, the board could make a finding as to the proper assessments for 2002 and that the same values would apply for 2003. (The 2004 assessment is not affected by this Decision, however, because the City performed a sales update and the assessments changed in that year.)

Subsequent to the hearing, the board directed its senior review appraiser, Ms. Joan Gootee, to make an inspection of the Property and prepare an independent analysis of the Property’s market value as of April 1, 2002. Ms. Gootee filed a report dated July 6, 2005 (the

“Report”) and the parties received copies and were given 20 days to submit written comments.

As part of its deliberations, the board has reviewed the Report and the comments of the Taxpayer and the City.

Board’s Rulings

Based on the evidence, the board finds the proper assessment to be \$582,600 for the Property and the appeals are therefore granted for the reasons discussed below.

As noted by the City in its July 26, 2005 letter to the board, the Property “is a difficult property to appraise because of its uniqueness.” The Property is a “condex” consisting of two “identical” units owned by the Taxpayer. Report, pp. 5 and 9. Each unit contains 1,376 square feet of living area (on two floors) and a full, “walk-out” basement containing 636 square feet. Id. at p. 10.

The Taxpayer purchased Unit 2 (124 Lucerne Avenue, Lot 002) in 1986 from the developer for \$237,500 and Unit 1 (122 Lucerne Avenue, Lot 001) in 1995 from the FDIC (Federal Deposit Insurance Corporation) for \$115,000 after a bank foreclosure. Id. at p. 5 and 7. The Property’s land area is relatively small (0.353 acres) and irregularly shaped, with 26 feet of waterfront on Lake Winnepesaukee close to the mouth of Paugus Bay and a depth of 275 feet. Id. at p. 5; see also Taxpayer Exhibits 1 and 2. The Report notes that Unit 2 has “superior views” and Unit 1 has a view “mostly obstructed by trees.” Report at p. 10; see also Taxpayer Exhibit 1.

The Report concludes the Property’s April 1, 2002 market value is \$605,000 (\$295,000 for Unit 1 and \$310,000 for Unit 2). Applying the median ratio of 96.3% to these market value estimates results in an abatement to \$284,100 (rounded) for Unit 1 and \$298,500 (rounded) for Unit 2, for a total revised assessment of \$582,600 for the Property.

In the City's comments on the Report, the City's attorney, Judith E. Whitelaw, Esq., appears to concede the Property is overassessed (at \$930,000 in total), but asserts the market value that should be applied is \$676,800 (\$336,000 + \$340,800), approximately \$70,000 higher than Ms. Gootee's estimate. The board disagrees and finds the \$605,000 market value estimate contained in the Report is well supported by Ms. Gootee's analysis and the evidence presented at the hearing. The Taxpayer's representative, David Irwin, concurs, stating that "Ms. Gootee's valuation is a more thorough analysis than that presented by either the taxpayer or the [C]ity. I would respectfully urge the board to give it great weight." The board will briefly discuss the City's concerns with the Report.

The board does not agree that the comparable sales used in the Report are not reliable simply because their selling prices are somewhat below the estimated values of Units 1 and 2. The City noted the unique nature of the Property and there is no evidence the comparables chosen by Ms. Gootee were not the best available in light of the Property's uniqueness. As a condex, the Property should command a higher value than a duplex and a lower value than two condominium units in a larger development with more amenities, for example.

The City's attorney also notes one of the comparables used in the Report (Comp #2, 614 Endicott Street) "resold eight months after April 1, 2002 on December 12, 2002" for a higher amount. All of the Report's comparables are from 2001. Taking a simple average of the two sales (one in 2001 and one in 2002) would not be appropriate if the rate of appreciation of properties in fact changed over time. The City presented no evidence of the rate of appreciation due to market conditions in 2001 or 2002.

Further, the City's attorney states that a location adjustment should have been made because several of the comparables were on Paugus Bay rather than "on the big lake" (Winnepesaukee); she refers to "several hundred sales" over 11 years to assert that a location

premium of 10% to 25% applies to “big lake” properties, but there was no evidence in the record to support such a premium and the Report considered, but rejected, the idea of a location adjustment based on an analysis of the sales and their locations. Report, p. 19. The board must base its decision on the evidence presented rather than allegations outside the record. Robert Camp, the City’s new assessor, testified at the hearing, but had no personal knowledge regarding such a difference. The board therefore concludes there is no basis in the record for making the 10% “location adjustment” to comparable #1 suggested by the City.¹

Finally, the board notes the Report estimates a larger contributory value for the walk-out basement space (\$35,000) than the \$8,000 estimated in the Stecher Appraisal. The \$35,000 estimate is based on Marshall and Swift depreciated replacement cost calculations applied to 636 square feet. See Report, p. 19. In comparison, the amount proposed by the City in Municipality A (\$93,500, or approximately \$147 per square foot) as the value of the basement space is considerably higher and was not supported.

In summary, the board finds the assessment on the Property should be abated to \$284,100 for Unit 1 and \$298,500 for Unit 2, or a total assessment of \$582,600 for the Property. As previously discussed, these abated assessments, by stipulation of the parties, apply to both tax years 2002 and 2003, but not to tax year 2004 because the City performed a sales update and changed values in that year. Cf. RSA 75:8; 76:17-c, I and II. Consequently, if the taxes have been paid, the amount paid on the assessed value of the Property in excess of \$582,600 in tax year 2002 and tax year 2003 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

¹ The board also reviewed Municipality Exhibit A, which used two condominium unit sales in 2001 in a large complex on the same street (Lucerne Avenue) adjacent to the Property. This analysis made a large (31%) positive “Neighborhood” adjustment but the City could not support the basis for this adjustment given the close proximity of the properties.

A motion for rehearing, reconsideration or clarification (collectively “rehearing motion”) of this decision must be filed 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(f). 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: David Irwin, Tax Choice Services, Post Office Box 1297, Hillsboro, New Hampshire 03244, representative for the Taxpayer; Judith E. Whitelaw, Esq., Mitchell & Bates, P.A., 25 Beacon St. East, Laconia, New Hampshire 03246, counsel for the City; and Chairman, City Council, City of Laconia, 45 Beacon Street East, Laconia, New Hampshire 03246.

Date: August 29, 2005

Anne M. Stelmach, Clerk