Mostafa H. El-Sherif Rev. Trust

v.

City of Laconia

Docket No.: 20357-03PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 2003 assessment of $400,100 (building $400,100) on Map 264, Lot 409/6/005 a residential condominium (the "Property"). For the reasons stated below, the appeal for abatement is 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 assessment was excessive because:

(1) the Property is an attached duplex condominium and yet is assessed for more than nearby detached units with closer proximity to and better view of Lake Winnipesauke;

(2) the Property is located well back from Lake Winnipesauke and has only a limited view of the lake; and

(3) an appraisal prepared by Gerald T. Ulbricht ("Ulbricht Appraisal") estimated the Property's market value as of April 1, 2003 at $323,000.

The City argued the assessment was proper because:

(1) the Ulbricht Appraisal contains questionable, undocumented adjustments;

(2) the City's assessed value for the comparable sales contained in the Ulbricht Appraisal are all less than the sale prices that occurred shortly after April 1, 2003 indicating the comparable properties were not over assessed and, thus, less likely the Taxpayer's Property is not over assessed; and

(3) the City's analysis of sales of condominiums indicated duplex units warrant a higher adjustment factor and thus have a higher value than detached units.

Following the October 26, 2005 hearing, the board directed its senior review appraiser, Ms. Joan C. Gootee, to review the Ulbricht Appraisal, inspect the Property and prepare a report containing an independent estimate of value. After Ms. Gootee issued her report (the "Report"), it was circulated to the parties and they were given 20 days to submit any written comments. The Report estimated a market value of $325,000 for the Property as of April 1, 2003. The Town submitted comments to the Report, but the Taxpayer did not.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $312,000. This assessment is based on the board concluding the Report's estimate of market value of $325,000 is the best evidence. The board further finds the level of assessment within the City for 2003

was 96% based on the Department of Revenue Administration's ("DRA") equalization ratio for that year.

The board finds the best evidence of market value is the Report's estimate of $325,000. However, this value is also supported by the Ulbricht Appraisal which estimated the Property to be worth $323,000 as of April 1, 2003. The adjustments to the comparables in the Report's sales comparison approach, despite the City's assertions in its response to the Report, are adequately documented and explained. Specifically, the board finds the adjustment for the difference between single and duplex units is reasonable based on the paired sales analysis contained within the Report and generally comports with the board's general observations of the market valuing stand alone units higher than attached units. The City asserted its market analysis over the past 9 years indicates duplexes have a higher value than detached units; however, the City presented no analysis to support its contention.

Also, the board finds the Report's market value estimate of $325,000 comports with the fact the Property is more distant from the lake with a partial view compared to other units presented during the hearing that are closer to the lake and sold for less than what the Property was assessed for. A further concern of the board is the fact the City's assessment is based on 9 years of market trending since the last full evaluation in 1994 and the factors may not be truly reflective of market value. In fact, both the Report and the Ulbricht Appraisal indicate the various adjustment factors utilized by the City in assessing the Property result in an excessive and disproportionate assessment. For these reasons, the board grants an abatement to $312,000.

If the taxes have been paid, the amount paid on the value in excess of $312,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Until the City undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the City shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mostafa H. El-Sherif, 11 Catesby Lane, Bedford, NH 03110, Taxpayer Representative; and Chairman, City Council, City of Laconia, 45 Beacon Street East, Laconia, NH 03246.

Date: March 3, 2006

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Anne M. Stelmach, Clerk