

Peter I. and Veronica S. Cassell

v.

City of Laconia

Docket No.: 20494-03PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “City’s” 2003 assessment of \$389,500 (building \$389,500) on Map 264, Lot 410/6/010 a residential condominium (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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 Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) the Property and other units at the Beach Club Village at South Down Shores (“Beach Club”) increased at a greater percentage as a result of the 2003 update by the City;

(2) the Property is a “B”-unit of a duplex and yet is assessed at a higher amount than detached or single units that are closer to 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 \$322,000.

The City argued the assessment was proper because:

(1) the difference in assessments the City has for different villages at South Down was derived from statistical updates that occurred during the 2003 update; at that time no sales occurred in the Beach Club village;

(2) the City’s sales analysis indicated duplex units rather than detached units sell for more;

(3) several of the Taxpayers’ comparables sold after the April 1, 2003 assessment update for more than the City’s assessed values which was an indication the Property is not over assessed; and

(4) a number of the adjustments in the Ulbricht Appraisal are questionable and not adequately documented.

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 \$320,000 for the Property as of April 1, 2003. The City submitted comments to the Report, but the Taxpayers did not.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$307,200 based on the market value estimate of \$320,000 contained in the Report. The board finds the City's level of assessment was 96% based on the Department of Revenue Administration's ("DRA") 2003 equalization ratio study. Applying that ratio to the market value of \$320,000 results in the proper assessment of \$307,200.

As noted above, the board finds the best documented evidence of the Property's market value to be the estimate contained in the Report. However, the board also notes the Ulbricht Appraisal, despite any shortcomings, is generally supportive of the Report's findings. The board finds the Report, through its paired sales analysis of duplex units and single units, properly made the determination that the detached units had a market value of approximately \$10,000 more than the duplex units. Despite the City's assertion of market analysis indicating the opposite, the board finds the City presented none of the analysis to support its claim. The board also finds the Report's analysis that the single units are more valuable is in line with the board's general market observations of similar condominiums and common sense.

The Report's market value estimate also appropriately adjusts for the Property's distance from the lake and partial view relative to units that sold closer to the water that are used as comparables. As the Taxpayers noted it is incongruous that single units closer to the lake are assessed less than attached units more distant from the lake.

The board gives little weight to the City's argument that because the comparable sales utilized in the Report and the Ulbricht Appraisal sold for more than the City's 2003 assessments, it is evidence that the Property is not disproportionately assessed. The fact that some properties sold for more than the assessed value is never conclusive evidence that an appealed property will

follow the same pattern. Rather a property-specific, market value appraisal, such as that performed in the Report, is the best evidence as to whether the Property is disproportionately assessed or not.

Last, the board gives little weight to the Taxpayers' assertion that because the units at Beach Club increase at a higher percentage than other villages in South Down, the Property is thus disproportionately assessed. The percentage of increase is a relative measure and does not indicate whether the current assessments are disproportionately high or whether the prior assessments had been, for a number of years, disproportionately under assessed. Again, a thorough, market value appraisal, such as the Report, provides the best indication as to what the market value and thus the assessed value of the Property should be.

If the taxes have been paid, the amount paid on the value in excess of \$307,200 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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Peter I. and Veronica S. Cassell, 6 Hidden Cove, Unit B, Laconia, NH 03246, Taxpayers; and Chairman, City Council, City of Laconia, 45 Beacon Street East, Laconia, NH 03246.

Date: 3/3/2006

Anne M. Stelmach, Clerk