Robert and Claudie Shelton

v.

City of Dover

Docket No.: 20815-04PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 2004 assessment of $176,500 (land $34,000; building $142,500) on Map 31103/Lot 004B00, a residential, two-bedroom condominium unit at 27 Station Drive (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. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) there are seven buildings in this condominium complex and the Property is a middle unit located in Building 4 (as shown in Taxpayer Exhibit No. 1);

(2) Buildings 4 and 5 have higher assessments than the other buildings in the complex;

(3) new end units sold for about $5,000 more than middle units, because they are more desirable, having only one "noise wall";

(4) the units in Buildings 4 and 5 have finished areas (basements) instead of garages which should have less value; and

(5) the Property is entitled to an abatement because the Taxpayers are being unfairly taxed in relation to other units in the complex.

The City argued the assessment was proper because:

(1) the level of assessment in the City was 95.5% (as measured by the median ratio) for tax year 2004;

(2) the City has over 1,800 condominium units and looks at pricing and valuation issues very carefully; on resales, end units throughout the City do not show higher values than interior units;

(3) other variables have a higher impact on value, such as the finished basement which the Property has;

(4) if, as the Taxpayers suggest, the assessments on the inside units are lowered (based on comparisons to the end units) then the inside units would be even more "underassessed" than they already are; and

(5) Municipality Exhibit No. A contains the City's detailed analysis and indicates the Property is not disproportionately assessed but is, in fact, somewhat underassessed.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed.

The Property consists of a middle condominium unit in a four unit structure (Building 4) in an eight building complex containing 34 units. The units are very similar in size with the

exception of some having a garage and others having a finished basement. The Property is a two-story unit and has 1,110 square feet of living area with 320 of finished basement area instead of a garage. The Property was purchased new in September 2002 for $164,900.

The Taxpayers' sole argument is the end units in the complex are assessed disproportionately from the middle units because the end units sold new for $5,000 more than the middle units. In support of their assertion, the Taxpayers submitted a one page residential and apartment preliminary assessments for 2004 and a one page sheet entitled sampling of sales used for 2004 assessments. See Taxpayer Exhibit No. 1. The board finds this evidence does not support a claim of disproportionality which requires a showing that a taxpayer's property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the municipality. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003).

The City presented testimony with supporting evidence which indicated the unit sale prices within the complex were increasing at a rate of 1% per month during the period for 2003 and 2004. The 1% per month increase was consistent with the findings of other residential properties in the City. The City testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the City. This testimony is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

The City indicated sale prices varied in the complex based upon the configuration of the units and other factors; further, the indicated range of 13 sales, which sold from January 2003 through April 2004, was $164,933 to $194,933. A review of sales of four units in the complex, which sold from September 2002 through January 2003, indicated a time adjusted average price

of $192,800. Of the four units which sold, one was the Property which was purchased by the Taxpayers on September 4, 2002 for $164,933. A 1% per month adjustment for time arrives at an indicated sale price of $196,300 (rounded) as of April 1, 2004. This value, when equalized by the 2004 ratio of 95.2% indicates an assessed value of approximately $186,878 ($196,300 x 0.952). The 2004 assessment under appeal ($176,500) is approximately $10,000 less than this indicated assessed value.

With respect to the sale prices of end units, the City testified that new end units did, in fact, sell for more than middle units as a result of their increased cost of construction; however, upon resale, the market indicated no significant difference in the value of end versus middle units. The board finds the Property was not overassessed. However, to the extent the end units may be underassessed, the board finds the underassessment of other properties does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987)[1].

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

[1] For the board to reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights and measures inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper yardstick to determine proportionality, not just comparison to a few other similar properties. Id.

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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Michele E. LeBrun, Member

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Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Robert and Claudie Shelton, 27 Station Drive, Dover, NH 03820, Taxpayers; and Chairman, City Council, City of Dover, 288 Central Avenue, Dover, NH 03820.

Date: October 12, 2007

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Anne M. Stelmach, Clerk