

Robert D. Lepine Revocable Trust

v.

City of Nashua

Docket No.: 21494-05PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2005 abated assessment of \$186,600 (residential condominium building only) on Map B/Lot 2425/Unit 204 (the “Property”). For the reasons stated below, the appeal for abatement is denied.

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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Sky Meadow Condominium project consisting of five distinct and unique villages with one association, is separate from the Sky Meadow Country Club and, without a membership, none of the country club amenities (golf, club house, swimming pool and tennis courts) can be

enjoyed by the condominium unit owners (see the statement in Taxpayer Exhibit No. 1 and its attachments);

(2) there is little or no area available for personal recreational use near the building where the Property is located in the Mountain Laurels Village (Building 12), this building is identical to the adjacent Building 10 and both buildings are about 22 years old and have not been updated;

(3) the Property has 1-bedroom, 1-bathroom and a “galley” kitchen, with the smallest floor plan layout (761square feet) in the whole building (see Taxpayer Exhibit No. 1, Attachment E and the photographs in Taxpayer Exhibit No. 2);

(4) the Property was purchased on January 15, 2004 for \$160,000 in an arm’s-length transaction (see Taxpayer Exhibit No. 1, Attachment F);

(5) a unit with an identical floor plan in Building 12, Unit 304, sold for \$157,000 on May 28, 2004 and was appraised at \$160,000 on April 29, 2004 (see Taxpayer Exhibit No. 1, Attachments H and I);

(6) sales of other units, several with larger floor plans, also demonstrate the Property is overassessed (see Taxpayer Exhibit No. 1, Attachments J - M);

(7) proximity to the golf course results in loud (lawnmower) noises early each morning; and

(8) the Property is entitled to a further abatement to \$160,000.

The City argued the assessment (as abated at the municipal level) was proper because:

(1) the City prepared a “Summary Appraisal” (Municipality Exhibit No. C), using comparables that were “identical” in most respects (except for floor level and dates of sale) and estimates a market value of \$192,100 as of the assessment date;

(2) higher floors have better views of the golf course and less traffic factors and therefore have higher market values, estimated to be \$5,000 per floor level, based on sales data;

- (3) a 5% time adjustment was used in the City's appraisal, which is quite reasonable;
- (4) several of the sales used by the Taxpayer are unreliable because they were not arm's-length sales [for example, Unit 304 sale is not a "qualified" sale because the parties to this sale had a landlord-tenant relationship and Unit 508 sale is one where the "buyer knew seller" (as indicated in Taxpayer Exhibit No. 1, Attachment M)];
- (5) because of a large number of abatement requests and appeals in tax year 2005, the City reexamined its assessments for the Sky Meadow condominium units, abatements were recommended and approved, including one on the Property, and, in addition, assessed values were further adjusted in tax year 2006;
- (6) the City inspected Unit 508, one of the Taxpayer's comparables, in May, 2006, and learned the unit was in bad condition at the time of its sale (in November, 2005), further learned the unit had been purchased from someone the buyer had been playing golf with and there is no indication this unit was offered on the open market prior to its sale (see Municipality Exhibit No. B); and
- (7) because of the City's assessment updates in subsequent years, any abatement granted for tax year 2005 should have no impact on the subsequent year assessments (see RSA 76:17-c).

The parties stipulated the level of assessment in the Town for tax year 2005 was 98.6%, the median ratio computed by the department of revenue administration. Because of similarities between the issues relating to the Property and two other appeals of properties in the same building heard on the same day (Paganis, Docket No. 21498-05PT and Nochnuk, Docket No. 21519-05PT), the parties agreed the board could take official notice of the evidence presented in all three appeals.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionality assessed. The appeal is therefore denied.

The board noted the detailed testimony presented by the Taxpayer regarding the small size and the other limitations associated with the unit, as well as his beliefs regarding how the market perceives Sky Meadow as an affluent and desirable place to live. Assessments, however, must be based on market value. See RSA 75:1. How the market perceives the “bundle of rights” associated with the Property, relative to other properties, is dependent on a host of subjective, as well as objective, factors and may or may not be the same as how any individual, such as the Taxpayer, views those rights. For example, to the extent location within Sky Meadow is perceived by the market to have value, even absent the amenities provided by membership in the country club (golf, club house, swimming pool and tennis courts), this value is reflected in the sale prices of other units comparable to the Property.

The board examined the comparable sales data presented by the Taxpayer and the City, as well as the purchase price he paid, to help determine the most reasonable indication of the market value of the Property as of the assessment date. In this regard, the focus must be on proportionality, requiring a review of the assessment to determine whether the Property is assessed at a higher level than the level generally prevailing in the municipality. See Appeal of Andrews, 136 N.H. 61, 64 (1992); and Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985). There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

The Taxpayer purchased the Property in January, 2004 for \$160,000, approximately 14 months before the assessment date. While he pointed to various features of the Property, such as its relatively small size (761 square feet), layout and other factors, that would make his unit less desirable, he did not dispute that some price appreciation did occur in the market during this time period. Other taxpayers he appeared with and spoke on behalf of suggested an 8% appreciation rate in their presentations and the City used 5% in its analysis. Based upon the testimony, the board finds it is probable that some appreciation occurred from the time the Taxpayer purchased the Property to the assessment date (April 1, 2005). Thus, the Taxpayer's contention that the Property had a market value of only \$160,000 (the same value as his purchase price 14 months before) is not sustainable.

The board further notes the City used the Taxpayer's purchase of the Property as one of three comparables in its own analysis, noting it was at the low end of the value range. While the sale price is some indication of market value (see Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988)), where there is evidence of other sales of similar properties, all market data must be considered in determining whether the assessment is disproportionate or not. Said another way, individual sales are proxies for market value and no one sale is empirically definitive of a property's market value.

The Taxpayer also emphasized the sale of Unit 304 in May, 2004 for \$157,000. The board finds this sale does not meet the definition of an arm's-length transaction and thus is a less

reliable indication of market value. A standard definition of what constitutes market value, formulated by The Appraisal Institute in The Appraisal of Real Estate (12th ed.), is as follows:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

See also Society Hill at Merrimack Condominium Association v. Town of Merrimack, 139 N.H.

253, 255 (1994) (when utilizing sales as the basis for estimating market value, a number of

factors must be considered in determining whether sales are indicative of market value,

“including whether the sale was an arm's length transaction, whether additional incentives were offered, whether unusual duress existed against either the buyer or seller, and whether some relationship existed between the buyer and seller that would influence the sale price.”)

This particular sale, however, was not exposed to the market and not subject to either a seller's or a buyer's commission. The buyer (Kathy A. Paganis) testified she had been renting the same unit for several years. While Ms. Paganis stated at the hearing she had been looking to purchase a larger housing unit, she decided to purchase Unit 304. She could have done so because the negotiated price was advantageous compared to her other options and because she avoided the expense and inconvenience of moving by buying it. While a financing appraisal for this property was also submitted, the board gave it little weight because the appraiser made no adjustments for floor level (except in his comparable 1 for 'obstructed view') and because the

date of the appraisal is one year before the assessment date and the appraiser was not present at the hearing to explain or defend his value conclusion.

The board also considered the “Mello” property sale (Building 10, Unit 104) that occurred in July, 2004 for \$142,500. The City noted there was a later sale of this same property in September, 2005 for \$225,000, a sale closer to the assessment date which casts doubt on how valid the earlier sales price may have been. While there was no specific evidence submitted to explain the price differential between the two sales, the board finds the City raised legitimate questions regarding whether the sale was a reasonable indicator of market value.

Finally, the board considered the sale of Unit 508 (owned by the Nicolettas) in Building 12 for \$150,000 in November, 2005. The parties disagreed as to whether this was an arm’s-length transaction based upon information received from the buyer and a site visit made by the City (see Municipality Exhibit B). On balance, the board finds this transaction also does not meet the test for an arms-length sale. Among other things, this property was not listed for sale on the open market; instead, the sale was transacted by two individuals playing a round of golf. In addition, the City indicated there was considerable deferred maintenance yet to be done; the site visit reflected considerable additional costs of renovation (\$12,575) which the buyer was expending after the purchase. Id.

The board also examined the “Summary Appraisal” evidence presented by the City. The board finds the City used an acceptable methodology, appropriate comparables and made reasonable adjustments, namely for the date of sale and floor level of each unit. Each of the City’s three comparable sales appear to have been exposed to the market with no unusual or extraordinary circumstances discernible pertaining to each sale, such as those described above for the Taxpayer’s own comparables. Consequently, the board finds the correlated market value,

adjusted by the level of assessment, is a reasonable indicator that the Property was proportionately assessed ($\$192,100 \times 0.986 = \$189,400$).

For all of these reasons, the appeal is denied.

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(g). 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

Albert F. Shamash, Esq., Member

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Docket No.: 21494-05PT

Page 9 of 9

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Robert D. Lepine, 12-204 Mountain Laurels Drive, Nashua, NH 03062, Taxpayer; and Chairman, Board of Assessors, City of Nashua, PO Box 2019, Nashua, NH 03061.

Date: 08/07/08

Anne M. Stelmach, Clerk