

Rene B. Albina Revocable Living Trust

v.

City of Nashua

Docket No.: 22271-05PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2005 abated assessment of \$296,300 on Map B/Lot 3073/Unit 21 a residential condominium at 21 Georgetown Drive (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 has been granted leave to not attend the hearing, but argued, in his appeal and other submitted documents, that the assessment was excessive because:

- (1) he purchased the Property for \$285,000 on July 11, 2005;
- (2) applying an 8% appreciation factor, the estimated market value of the Property was only about \$279,000 as of the assessment date; and

(3) three comparable sales of “identical” properties also support an abatement.

The City argued the abated assessment was proper because:

(1) it prepared a “Summary Appraisal” (Municipality Exhibit No. B), using comparables that were “identical” in most respects (except for sale dates, with a 5% appreciation factor) and estimates a market value of \$299,700 as of the assessment date;

(2) the Taxpayer’s February, 2008 submission includes sales which he represented occurred in 2006, but no sale dates were listed on the transaction summaries;

(3) the Taxpayer’s own purchase of the Property is not determinative because one sale does not make a market; and

(4) the City did a measure and list inspection of the Property in August, 2006 and also inspected the Property in April, 2001, around the time the unit was originally constructed.

Board’s Rulings

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

As stated above, the focus of our inquiry is proportionality, requiring a review of the assessment to determine whether the Property is assessed at a higher level than the level generally prevailing. Appeal of Andrews, 136 N.H. 61, 64 (1992); 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).

While the sale of the Property is some indication of market value (see Appeal of Lakeshore Estates Estates, 130 N.H. 504, 508 (1988)), the City is correct that 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 City's Summary Appraisal included three comparable sales of "Delaware" style units, the same as the Taxpayer's Property. These sales are identical in living area, bedroom and bathroom count and interior location within the townhouse building and, thus, the only adjustment necessary was for the comparables' sale dates. These three sales indicated a market value range of \$292,400 to \$301,500 which the City correlated to the median market value of \$299,700. This market value conclusion which adjusted by the 2005 equalization ratio of 98.6% provides an indicated assessed value of \$295,500, nearly identical to the abated value of \$296,300.

Even if the Taxpayer's sale is considered in conjunction with the City's three comparables, the correlated market value could not change enough to warrant an abatement. Due to the Taxpayer not being present at the hearing, neither the City nor the board was able to inquire as to the conditions and arm's-length nature of the sale. Further while the board did review the three sale listings submitted with the Taxpayer's February 23, 2008 letter, it was not possible to tell whether the sold units were of the same square footage and style as the Property or when they sold in 2006. Nor was there any evidence as to whether the 2006 market warranted any different adjustment than the sales that had occurred in 2004 and 2005 as utilized by the City. Consequently, in weighing all the sales evidence submitted, the board concludes the City's sales are most comparable and thus are most indicative of the Property's market value range. Because the abated assessment of \$296,300 is within that range, the board finds no abatement is warranted.

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

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Rene B. Albina, 237 Baines Ct., Cary, NC 27511, representative for the Taxpayer; and Chairman, Board of Assessors, City of Nashua, PO Box 2019, Nashua, NH 03061.

Date: 08/07/08

Anne M. Stelmach, Clerk