

Ronald and Jennifer Fisher

v.

City of Nashua

Docket Nos.: 22614-06PT & 23608-07PT

DECISION

The “Taxpayers’” appeal, pursuant to RSA 76:16-a, the “City’s” 2006 abated assessment of \$216,700 and the 2007 abated assessment of \$222,900 on Map 103/Lot 243, consisting of 0.230 acres with single family residence (the “Property”). For the reasons stated below, the appeals for abatement are 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 assessments were excessive because:

(1) the City has assessed the Property similar to properties in more desirable neighborhoods which sold from 2004 to 2005;

- (2) a comparison to more comparable properties which sold in 2006 and 2007 supports the overassessment of the Property;
- (3) a property across the street, during 2006 and 2007, was occupied by 30 to 50 people which generated an inordinate number of vehicles parking both on the property and on Linwood Street; the occupants and their vehicles of this property were noisy and caused an unsafe environment for the neighborhood generating numerous police visits; and
- (4) based on comparable sales in similar neighborhoods, adjusted utilizing the same amounts/factors as the City, results in indicated market values of \$200,000 and \$195,000 for 2006 and 2007 respectively.

The City argued the abated assessments were proper because:

- (1) they were derived from summary appraisal reports prepared by Gary W. Turgiss, Appraiser II on the City assessing staff;
- (2) the Taxpayers' 2007 comparable number 3 (70 Burke Street) was not an arm's-length transaction as it was only one of two properties sold to the same grantee by the same grantor for the purpose of consolidation and re-subdivision into four lots;
- (3) the Taxpayers' comparables were drawn from a range of sales between \$190,000 and \$200,000 and thus are a "self-fulfilling prophecy;" and
- (4) during its exterior view of the Property, the City did not observe any negative effect of the property across the street.

Board's Rulings

Based on the evidence, the board finds the proper assessments to be \$205,900 and \$211,800 for tax years 2006 and 2007 respectively. These assessments are based on applying a

5% economic adjustment to the City's abated assessments for its proximity to the property across the street that, for the two years under appeal caused a public disturbance.

While the board recognizes Ms. Fisher's efforts in researching the market and comparable sales, the board gives more weight to the City's knowledge of the market and finds the City's comparables in general to be more reliable indicators of the Property's market value. However, Mr. Turgiss, during the preparation of the City's summary appraisals (Municipality Exhibits B and C) did not note any negative impact to the Taxpayers' Property by the property across the street and its occupant and vehicular disturbance issues as testified to by Ms. Fisher. The board agrees with Ms. Fisher that it is unlikely the disruptive actions she testified to would have been noted by the city during its business hour visits as most of those disruptive actions (loud music, speeding vehicles, inordinate use of on-street parking, etc.) would be more evident in the morning and evening hours. Based on Ms. Fisher's testimony, the board finds the neighboring property's disturbance appears to be an anomaly for the typical residential neighborhoods and would place the Taxpayers' Property at a competitive disadvantage if it were to be marketed as of April 1 of the two years under appeal. Consequently, it is a factor that should be considered in arriving at a proportional assessment. See Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975). While the City had not had a chance to research and attempt to quantify such adjustment, the board, based on its knowledge and experience finds that a 5% economic adjustment to the City's abated assessments is appropriate to recognize the negative impacts of the neighboring property in 2006 and 2007. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33, VI; Appeal of City of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate

evidence). The board's finding is limited to the two years on appeal. The board does not have jurisdiction to issue a finding in subsequent non-appealed years. However, the board would encourage the parties revisit this issue for subsequent years particularly given Ms. Fisher's observation that, after immigration official/police involvement, the neighborhood "is getting better."

If the taxes have been paid, the amount paid on the value in excess of \$205,900 and \$211,800 for tax years 2006 and 2007 respectively shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town 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(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

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Ronald and Jennifer Fisher, 70 Linwood Street, Nashua, NH 03060, Taxpayers; and Chairman, Board of Assessors, City of Nashua, PO Box 2019, Nashua, NH 03061.

Date: May 8, 2009

Anne M. Stelmach, Clerk