

**Enxing Family Realty Trust**

**v.**

**City of Laconia**

**Docket No.: 22909-06PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2006 assessment of \$704,800 (land \$289,000; building \$415,800) on Map 274/Lot 178-15, a single family home on 0.17 acres at (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the home is small, and is located on only 1/8 of an acre;
- (2) a June 2004 sale of a similar property at 70 Paugus Park Road (two houses from the Property) for \$500,000 supports the overassessment of the Property;

(3) the Property was listed for sale for \$599,900 in 2005 for a period of 10 months and no offers were received; and

(4) the Property was worth approximately \$550,000 as of April 2006.

The City argued the assessment was proper because:

(1) it is supported by the comparable sales submitted in Municipality Exhibit A;

(2) all of the properties in the Taxpayer's neighborhood were assessed utilizing the same assessment methodology including the same "cost trend factor" applied to the building portion of the assessment; and

(3) the Taxpayer's dwelling is a year-round structure and sales of "tear down" properties indicate a Paugus Bay waterfront site market value of \$400,000 to \$500,000.

The parties stipulated the department of revenue administration's 2006 median ratio of 98.4% was indicative of the City's 2006 level of assessment.

During deliberations, the board directed its RSA 71-B:14 review appraisers to perform an independent opinion of value of the Property. See Appeal of Sokolow, 137 N.H. 642 (1993).

The review appraiser's "Report" was filed by Theresa M. Walker on September 14, 2009 and the parties were provided fourteen (14) days to file any comments before the board finalized its deliberations considering all the evidence including the Report. The Report estimated a market value of the Property at \$625,000 as of April 1, 2006 based on the sales comparison approach. No comments to the Report were filed by the parties.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$615,000 based on a market value finding of \$625,000 and the stipulated ratio of 98.4% ( $\$625,000 \times .984$ ). The board

finds the best evidence of market value was Ms. Walker's Report which estimated the Property's market value at \$625,000.

The Taxpayer's two arguments were: 1) sales in the area indicated a tear down value of approximately \$550,000; and 2) the Taxpayer had listed the Property in 2005 for \$599,900 with no offers. Given the totality of evidence submitted (including the municipality's sales and the Report), the board finds the Taxpayer's evidence is not compelling as to its requested opinion of value of \$550,000 as of April 1, 2006 for several reasons.

First, the Report provides an in depth review and analysis of sales of properties that transacted as "tear downs" or that essentially sold with the land or site being the primary motivation for purchase. Those sales (see Report at p. 7) indicated the Property's site value with its 60 feet of water frontage had a value of approximately \$520,000 to \$580,000. However, the Report went on to conclude, which the board agrees with, that the improvements including the dwelling and waterfront improvements provide at least some interim use and thus contribute to the value of the site. To find a \$550,000 value, as requested by the Taxpayer, would ignore the value of such improvements. Indeed, the Report went on to identify three comparable sales, and in particular sale number 3, which support a higher value of approximately \$625,000.

Second, based on the research performed by Ms. Walker utilizing the Northern New England Real Estate Network ("NNEREN"), the Taxpayer had actually listed the Property for greater asking prices and for a longer period of time than testified to by Mr. Dan Enxing, Trustee of Enxing Family Realty Trust. The Report indicates the Property was initially listed on March 25, 2006 with an asking price of \$739,000 which was reduced to \$669,000 on July 7, 2006 before being further reduced to \$599,000 on August 7, 2006. The Property was taken off the market less than a month later on September 1, 2006. Consequently, the board finds the

Taxpayer's assertion that the Property had been reasonably exposed to the market at the \$599,000 level is not supported by the listing history reported by NNEREN.

However, neither the evidence submitted by the City nor the market value estimate of the Report support the City's assessment. As the board will detail in the following paragraphs, the City's assessment methodology and annual "factoring" has, in this case, produced an assessment that is disproportionate to the Property's market value and the City's 2006 level of assessment. Consequently, the board orders an abatement as summarized above.

The board is certainly cognizant of the Taxpayer's burden of proof. However, the board has concerns, as were expressed during its questioning of the City's Assistant Assessor Deborah Derrick at the hearing, as to whether the City's methodology in performing its annual statistical update by applying a "cost trend factor" to only the building portion of the assessment results in assessments that are reflective of the land and building components contributory values. In fact, Ms. Derrick agreed that generally the land component was substantially underassessed (45% to 50% of market value) while the building value was significantly higher than its actual contributory value. (For example, the City's 2.85 cost trend factor applied to the Taxpayer's modest dwelling equates to an indicated replacement cost before depreciation of over \$305 per square foot, a value that is far in excess of any reasonable estimated replacement cost for the dwelling.) The City stated it recognized this problem and had performed a cyclical review of all the physical data in the City and has contracted with Vision Appraisal Technology to perform a general reassessment effective for tax year 2010. The board commends the City for recognizing the need to "abandon" the questionable factoring process that had been recently employed and to, on its own, initiate a general reassessment.

Because of this questionable methodology, the board was unable to give as much “presumption of correctness” to the assessment that is normally attributed to a municipality’s assessment. Also, the sales data submitted by the City (particularly the sales of 70 Paugus Park Road and 90 Paugus Park Road) indicated the Paugus Bay site values were substantially understated. This inconsistency between the sales data and the City’s land assessments was a significant contributing factor for the board to engage its review appraisers to perform an independent market value estimate.

If the taxes have been paid, the amount paid on the value in excess of \$615,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. This ordered assessment shall apply to subsequent years in which the assessment on the Property was the same as the City’s 2006 assessment. 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

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Enxing Family Real Estate Trust, c/o Daniel J. Enxing, 1 Rindge Rd., Andover, MA 01810; and Chairman, Board of Assessors, City of Laconia, 45 Beacon Street East, Laconia, NH 03246.

Date: October 30, 2009

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Anne M. Stelmach, Clerk