

Joni Plante

v.

Town of Raymond

Docket No.: 23990-08PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$221,600 (building only) on Map 38/Lot 5-24, a residential condominium located in the “Clearwater Estates” development (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 Property was purchased for \$112,500 in January 2008 and sold in January 2009 for \$136,930;

- (2) the Taxpayer was in attendance at the consolidated hearing on 19 other properties in the Clearwater Estates development (See Karen M. Wooley v. Town of Raymond, Docket Nos.: #24109-08PT/24923-09PT, et. al.) and asked the board to take official notice of the evidence presented in that hearing such as the flood issues, unfavorable mortgage loans, 55+ community and nearby earth excavation sites;
- (3) all known sales in Clearwater Estates during a 20-month window were correlated to arrive at an average market value of \$125,819;
- (4) this Property is unique from the Wooley, et. al. properties because it has no interior stairs from the top floor to the bottom bedroom; its only indoor access is via an elevator and stairs from the outside of the building;
- (5) a January 13, 2009 appraisal prepared by paul brown & co., Valuation and Consulting Services (“Brown Appraisal”) for financing purposes estimated the market value as of December 31, 2008 to be \$140,000; and
- (6) because of the uniqueness of this Property with its interior access, an adjustment to the Brown Appraisal should be made and a market value of \$125,000 is supported by the sales during the 20-month window.

The Town argued, in addition to the evidence presented in Wooley, et. al., an adjustment should be made reducing the elevator assessment from \$10,000 to \$5,000 and applying a 3% functional depreciation for the interior access; further,

- (1) the Property was purchased from Fire Lake Corporation (“Fire Lake”), the developer, who was “getting rid” of units to move on to another phase of the development; and
- (2) most of the sales utilized by the Taxpayer were similarly acquired from Fire Lake and the 1 Red Sox Lane was a sale by a bank after foreclosure.

The parties stipulated the level of assessment in the Town was 107%, the median ratio computed by the department of revenue administration for tax year 2008.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$178,700.

Because the board took official notice of the record in the consolidated hearing in the Wooley, et. al. properties, the board's general rulings in the Wooley decision are incorporated in this Decision and a copy of the Wooley decision is attached.

As discussed in general in the Wooley decision, the board gives little weight to the depressed sales by the developer that occurred in the 2007/2008 time period, one being the purchase by Vince Kerns, Ms. Plante's brother, of the Property under appeal for \$112,500. As noted in the Wooley decision, the developer sold several units, including the Property, for below market prices for financial and business reasons to clear out the inventory of remaining units in an earlier phase. Ms. Plante did not purchase the Property for occupying but rather for "flipping" the Property for profit from the below market purchase price which Ms. Plante did by selling the Property for \$136,900 approximately one year after purchasing it. Consequently, both the seller and the purchaser were unduly motivated and not purchasing the Property for its highest and best use which is for residential occupancy by an over 55 year old individual (Ms. Plante conceded at hearing that she was not of that age). Thus, this sale price was not reflective of the Property's highest and best use. For taxable property to be assessed proportionally, it must be valued at its highest and best use. 590 Realty Co., Ltd v. City of Keene, 122 N.H. 284 (1982).

As the board found in the Wooley decision, the board is unable to place any weight on the Brown Appraisal market value estimate because only the transmittal letter was submitted and

the board was unable to review any of the analysis, methodology, comparables or adjustments that may have been contained in the report.

The Town testified it abated the Property's assessment in 2009 to \$210,200 to account for the functional obsolescence of the unit only having an elevator (no stairs) between the two floors of living area. Both the testimony of Mr. Pelletier, the Town's Assessor, and a copy of the abated assessment-record card of the Property indicate the reduction resulted from reducing the elevator contributory value from \$10,000 to \$5,000 and applying a 3% functional depreciation to the entire Property. This reduction of \$11,400 appears reasonable for this unique aspect of the Property as compared to other units at Clearwater Estates.

In the Wooley decision, the board adopted the Pelletier recommended abated assessments (which a quorum of the selectmen did not approve) as a reasonable adjustment to recognize the market reduction in the 2007/2008 time period for properties at Clearwater Estates and the several factors impacting that value enumerated in the Wooley decision. The reductions approximated a 15% adjustment from the original assessments, and the board finds a similar reduction is warranted in this appeal resulting in a revised abated assessment of \$178,700 ($\$210,200 \times .85$). Because the 2008 level of assessment was 107%, this abated assessment provides an indicated market value of approximately \$167,000 ($\$178,700$ divided by 1.07). While this market value estimate is higher than that argued by the Taxpayer and apparently arrived at by the Brown Appraisal, the board finds it is in keeping with the two non-bank non-developer sales that occurred in 2007 (7 Red Sox Lane and 48 Patriots Way) that were presented in evidence in the Wooley appeals.

If the taxes have been paid, the amount paid on the value in excess of \$178,700 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Joni Plante, 27 Aunt Mary Brook Road, Candia, NH 03034, Taxpayer; Chairman, Board of Selectmen, Town of Raymond, 4 Epping Street, Raymond, NH 03077; and a courtesy copy to: Jonathan Rice, Commercial Property Tax Management, LLC and CPTM Consulting Group, LLC, 10 Commerce Park North - Suite 13B Bedford, NH 03110-6959.

Date: January 6, 2011

Anne M. Stelmach, Clerk

Joni Plante

v.

Town of Raymond

Docket No.: 23990-08PT

ORDER

The board has reviewed the “Taxpayer’s” February 1, 2011 “Motion for Rehearing” (the “Motion”). In accordance with RSA 541:5 and Tax 201.37(d), the board issues this suspension Order until it rules on the Motion.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

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Dated: February 10, 2011

Anne M. Stelmach, Clerk

Joni Plante

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Town of Raymond

Docket No.: 23990-08PT

ORDER

This “Order” responds to the Taxpayer’s February 1, 2011 rehearing request (“Request”) filed pursuant to RSA 541:3 and Tax 201.37. The Town did not file an objection to the Request. The Request is denied for the following reasons.

Tax 201.37(e) provides the basis for granting rehearing requests.

Rehearing motions shall only be granted for "good reason," pursuant to RSA 541:3, and a showing shall be required that the board overlooked or misapprehended the facts or the law and such error affected the board's decision. Rehearing motions shall not be granted for harmless error, meaning errors that, if corrected, would not challenge the board's ultimate decision.

The Request argues the board erred in its January 6, 2011 “Decision” because:

- 1) the seller (Plante) and the purchaser (Mirando) were not unduly motivated and further evidence can be submitted supporting this from the listing realtor;
- 2) the two sales referenced by the board as two non-bank non-developer sales were indeed sold by the developer;

- 3) an average of the 13 sales during a two year period, including sales from the developer and some bank sales, support a lower average market value; evidence can be submitted from the developer that the sales from the developer were at market; and
- 4) the supporting documents of the Brown Appraisal can be provided.

The Taxpayer requests leave to submit several additional documents to support her arguments made during the December 15, 2010 merit hearing and raised in the Request. Tax 201.37(g) requires parties to present all the evidence at the merit hearing except when such evidence is “newly discovered” or could not “have been discovered with due diligence in time for the hearing”.

Tax 201.37(g) Parties shall submit all evidence and present all arguments at the hearing. Therefore, rehearing motions shall not be granted to consider evidence previously available to the moving party but not presented at the original hearing or to consider new arguments that could have been raised at the hearing. Except by leave of the board, parties shall not submit new evidence with rehearing motions. Leave shall only be granted when the offering party has shown the evidence was newly discovered and could not have been discovered with due diligence in time for the hearing and when the new evidence will assist the board.

All the evidence the Taxpayer now seeks leave to submit could have been obtained and presented at the merit hearing but was not and, thus, pursuant to Tax 201.37(g), those portions of the Request are denied. In addition, the findings in either the Decision or the Wooley decision, which was attached and incorporated in the Decision, address, with sufficient specificity, the board’s findings on those issues the Taxpayer again argues on rehearing. “The board's explanations in support of its factual findings [must] satisf[y] the requirement that it ‘include specific, although not excessively detailed, basic findings in support of [its] ultimate conclusions.’ Appeal of Portsmouth Trust Co., 120 N.H. at 759, 423 A.2d at 607; see also RSA 541-A:20” Appeal of City of Nashua, 138 N.H. 261, 265 (1994).

The Taxpayer is correct in that the board erred at p. 4 of the Decision in finding two sales, 7 Red Sox Lane and 48 Patriots Way, were “two non-bank non-developer sales.” The Taxpayer submitted with the Request assessment-record cards that showed the sales of the two properties were from the developer. While this documentation establishes that the sales were from the developer, it is contrary to the understanding the board had based on the testimony and evidence presented during the merit hearing. Nonetheless, the board concludes that this error does not necessitate a reconsideration of the Decision because the board’s ruling was based upon the entire body of evidence presented in the Plante appeal and consolidated Wooley appeals. The evidence presented indicated varying sale prices of units at Clearwater Estates including several distressed sales, bank sales and several sales the developer was “dumping.” The ordered abated assessment of \$178,700 was in keeping with the Town’s assessor’s recommended abatements and reflective of the factors that negatively impacted the properties at Clearwater Estates in the 2007/2008 time period and as discussed in the Wooley decision.

Any appeal by the Taxpayer to the supreme court must be filed within thirty (30) days of the date on the board’s denial with a copy provided to the board in accordance with Supreme Court rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

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CERTIFICATION

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Date: March 4, 2011

Anne M. Stelmach, Clerk