

Anastasiou Family Rev. Trust

v.

Town of Litchfield

Docket No.: 24223-08PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2008 abated assessment of \$399,600 (land \$79,400; building \$320,200) on Map 6/Lot 83B, 23 Snowdrop Lane, a “condex” on 1.86 acres (the “Property”). For the reasons stated below, the appeal for further 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, represented by John and Maureen Anastasiou, argued the abated assessment was still excessive because:

(1) the Property and the adjoining property, 21 Snowdrop Lane, are condexes built at the same time by the same developer and 21 Snowdrop Lane sold in January, 2009 for \$290,000;

- (2) this sale is the best evidence of market value;
- (3) the Town applied somewhat different building square foot costs to each of these condexes in tax year 2008; and
- (4) the evidence presented supports a further abatement based on a market value estimate of \$300,000.

The Town argued the abated assessment was proper because:

- (1) an analysis of comparable sales (see “Assessment Report,” Municipality Exhibit A) indicates the assessment is proportional;
- (2) property values in the Town declined from 2007 to 2008 and even more from 2008 to 2009, as indicated by the changes in the median ratios for those years;
- (3) the Town corrected the minor square foot measurement and other errors on the assessment for 21 Snowdrop Lane and the slight difference in building values per square foot noted by the Taxpayer results only from these errors;
- (4) the Town abated the assessment on the Property from \$432,200 to \$399,600; and
- (4) no further abatement is warranted.

The parties agreed the level of assessment in tax year 2008 was 112.6%, the median ratio computed by the department of revenue administration.

Board’s Rulings

Based on the evidence, the board finds the Taxpayer failed to meet its burden of proving the abated assessment was disproportional. The appeal is therefore denied.

A proportional assessment must be based on market value adjusted by the level of assessment in the Town. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). To prevail on this appeal and obtain a further abatement, the Taxpayer needed to

establish the market value of the Property as of the assessment date (April 1, 2008) was less than \$355,000, rounded (the \$399,600 already abated assessment divided by the agreed-upon 112.6% level of assessment). The board finds the Taxpayer did not meet its burden of doing so in this appeal.

The Taxpayer did not present an appraisal or any other independent estimate to establish the market value of the Property as of the assessment date (April 1, 2008) was lower than \$355,000. Instead, its representatives relied primarily on their own testimony regarding one sale, 21 Snowdrop Lane, which occurred ten months after the assessment date at a price of \$290,000. While 21 Snowdrop Lane physically adjoins the Property and is very similar because they are both condexes constructed by the same builder at the same time, they are not identical units. On the facts presented, the board agrees with the Town that this one sale of an adjoining unit occurring ten months after the assessment date in a declining market (at a rate the Taxpayer did not dispute) is not necessarily indicative of value. The sale price of 21 Snowdrop Lane (\$290,000), when time adjusted to the assessment date for a declining market (at 0.875% per month), is \$315,400, rounded, not the \$300,000 value proposed by the Taxpayer.

The evidence establishes the seller was the builder of both units, who sold one unit to the Taxpayer (in October, 2004) and rented the other for several years and then sold it at a time when it was vacant. Because of these circumstances, the builder's motivations when selling 21 Snowdrop Lane in a declining market at a time of extraordinary financial turmoil, especially in the real estate industry, may have been different to those of a more typical homeowner.

As the supreme court and the board has frequently noted, there is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted by the municipality's general level of assessment, represents a reasonable measure of one's tax burden.

See Wise Shoe Company v. Town of Exeter, 119 N.H. 700, 702 (1979); and, e.g., Robert D.

Lepine Revocable Trust v. City of Nashua, BTLA Docket No. 21494-05PT (August 7, 2008)

(market valuations depend on a “host of subjective, as well as objective, factors,” not necessarily how any one individual might price one property at one point in time; consequently, “all market data must be considered,” even if the taxpayer wants to place emphasis on one sale, because “individual sales are proxies for market value and no one sale is empirically definitive of a property’s market value”). Because focusing on just one sale can be misleading and result in distortions, qualified appraisers and assessors are expected to examine a range of comparable sales, properly adjusted, to arrive at an informed and reliable estimate of market value. Looking at a number of properties and their price range is reasonable because this is how market participants, including buyers, sellers and real estate brokers, not just appraisers and assessors, tend to value property.

In addition to 21 Snowdrop Lane, the Town analyzed four other comparables, including three others on the same street (at 12, 15 and 17 Snowdrop Lane), all of which are condex units. After making what the board finds are reasonable adjustments for time of sale, size and other features, the Town developed a range of values for these four other comparable sales of \$373,586 to \$384,004, substantially higher than the value indication if 21 Snowdrop Lane is considered in isolation. (See Municipality Exhibit A.) When 21 Snowdrop Lane is included with these four sales, the value range expands (to \$308,522 to \$384,004), but the average value (giving equal weight (20%) to each of the five sales) is \$364,100, rounded. If, for the sake of argument, the 21 Snowdrop Lane is given twice as much weight (30%) as the other three sales on Snowdrop Lane (15%) and three times the weight of the 4 Lilac Court sale (10%), the weighted average value is \$357,400, rounded. These two value indications (\$364,100 and \$357,400) are

both higher than the indicated market value of the Property (\$355,000) based on its abated assessment.

A second complaint made by the Taxpayer is that the Town assessed 21 Snowdrop Lane slightly differently than the Property in tax year 2008 (resulting in indicated costs per square foot of \$100.23 and \$104.10, respectively). The Town's assessor explained at the hearing, however, that this minor difference resulted from a measurement error on 21 Snowdrop Lane, but this error has been addressed and corrected. The Town's assessor provided a reasonable explanation for the inadvertent error on the assessment-record card and noted it has been rectified so that 21 Snowdrop Lane is now being assessed higher than the Property. In any event, the possible temporary underassessment of this other property (because of an inadvertent error in one tax year) is not a proper ground for granting an abatement on the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987).

In summary, while the board understands the Taxpayer's motivation for comparing the Property entirely to one other (21 Snowdrop Lane) in order to obtain a larger tax abatement for tax year 2008, the Town was obligated to look at other available market evidence, including the comparables in Municipality Exhibit A, especially in a declining market when the sale the Taxpayer relies on occurred ten months after the assessment date. The board finds these comparables indicate a market value for the Property that reasonably supports the Town's abated assessment and no abatement is warranted. The appeal is therefore denied.

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

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: John and Maureen Anastasiou, 23 Snowdrop Lane, Litchfield, NH 03052, representatives for the Anastasiou Family Rev. Trust, Taxpayer; Chairman, Board of Selectmen, Town of Litchfield, Two Liberty Way - Suite 1, Litchfield, NH 03052; and Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: August 19, 2010

Anne M. Stelmach, Clerk