

Jeff and Kira Peasley

v.

City of Rochester

Docket No.: 24503-08PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “City’s” 2008 assessments of:

\$86,300 on Map 251/Lot 173-5, 39 Misty Lane, 4.45 acres of land only -- the “Unimproved Lot”; and

\$174,200 on Map 251/Lot 34-19, 419 Ledgeview Drive, a residential condominium -- the “Condominium.”

(collectively, the “Property.”) For the reasons stated below, the appeal for abatement is granted (but only to the limited extent recommended by the City at the hearing for the Unimproved Lot).

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments on the Property were 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 assessments were higher than the general level of assessment in the municipality. Id.

The Taxpayers argued the assessments on the Property were excessive because:

(1) as demonstrated in Taxpayer Exhibit No. 1, real estate prices were dropping sharply because of an economic downturn, reflected in the national “Case-Shiller” index of housing prices, but the City did not make any downward adjustments in its assessments for tax year 2008;

(2) the City assessed the Unimproved Lot for \$86,300 in that tax year, as it did for the prior two years;

(3) the Unimproved Lot was purchased in 2007 for \$74,900, two other lots in the vicinity (each about one acre in size) sold in 2007 for \$72,000 and \$68,500, and another lot sold in 2009 for \$56,000;

(4) a “site value” of \$72,900 is mentioned in the cost approach estimate in an appraisal of the Unimproved Lot (Taxpayer Exhibit No. 2), a good estimate of the value of the Unimproved Lot as of the appraisal date (August 4, 2008);

(5) the City lowered the land assessment to \$72,100 one year later (for tax year 2009), but the Unimproved Lot should have been valued at no more than \$70,000 for tax year 2008;

(6) similarly, Taxpayer Exhibit No. 3 supports an abatement on the Condominium, showing declines in housing prices and a market downtrend;

(7) 421 Ledgeview is a slightly better unit and sold in 2006 for \$195,000 and in 2009 for \$155,000, indicative of the market decline during that time period;

(8) the City lowered the assessments on the Condominium and 421 Ledgeview in 2009 and again in 2010, which is an acknowledgment of the decline in prices, but the City should have reduced the assessments in 2008 when the price declines became evident; and

(9) the assessment on the Condominium should be abated to \$160,000 to \$165,000 for tax year 2008.

The City argued the assessments, except as adjusted below for the Unimproved Lot, were proper because:

- (1) when the City set the land use change tax (“LUCT”) on the Unimproved Lot (at the time of purchase by the Taxpayers in 2007), the City used a market value estimate of \$78,800 and the Taxpayers did not object to or appeal this estimate of market value;
- (2) the City does not have a “crystal ball” that would have allowed it to predict future price declines in 2009 and 2010 when it set the tax year 2008 assessments (as of April 1, 2008);
- (3) all of the Misty Lane properties (where the Unimproved Lot is located) were in current use at the time they were sold and each buyer had to pay the 10% LUCT as additional consideration to acquire the full bundle of property rights;
- (4) the City is willing to abate the assessment on the Unimproved Lot to \$78,800, the market value used for the land use change tax (“LUCT”);
- (5) with respect to the Condominium, the City’s own sales analysis (see Municipality Exhibit A), developed when it set 2008 values, supports the proportionality of the assessment;
- (6) the City reviews assessments each year and in 2008 adjusted multi-family properties, but not other strata, because it found only the multi-family properties needed adjustment;
- (7) in addition, the City reviews the physical data on all properties cyclically every five years and 2010 is the certification year for the City; and
- (8) except for a proposed abatement on the Unimproved Lot (to \$78,800), the assessments on the Property for tax year 2008 are proportional.

The parties agreed the level of assessment in the City for tax year 2008 was 100.3%, the median ratio calculated by the department of revenue administration (“DRA”).

Board's Rulings

Based on the evidence, the board finds the assessment on the Unimproved Lot should be abated to \$78,800, the value proposed by the City at the hearing, but the Taxpayers failed to meet their burden of proving the Condominium was disproportionately assessed. The appeal is therefore granted, but only to this extent and for the following reasons.

Assessments must be based on market value. RSA 75:1. To determine whether a tax abatement is warranted, the board considers and weighs all of the evidence presented, utilizing its “experience, technical competence and specialized knowledge.” See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it”). Further, “judgment is the touchstone” for deciding a tax appeal. See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

As clarified at the hearing, the board only has jurisdiction over the tax year 2008 assessments on the Property in this appeal. (No appeal was filed for tax year 2009.) Many of the Taxpayers’ arguments emphasized what the City supposedly could have or should have known about the price declines, but these declines largely occurred after the assessment date of April 1, 2008. Although the City objected to the introduction of this evidence, the board overruled the City’s objection (see RSA 71-B:7 and Tax 201.30) and indicated it would give this evidence only the weight that it deserves.

Municipalities have an obligation to appraise property at market value as of the assessment date established by the legislature (April 1). (See RSA 74:1.) Municipalities typically collect and analyze market data and other evidence to establish assessments “as of” this date, completing the process by late summer before submission of financial reports to the DRA for tax rate setting purposes.

Consistent with this general practice, the City assessor testified he reviewed the available evidence over the summer before filing the required report with the DRA, but did not change the assessments on the Property in tax year 2008 (or for any class of property except multi-family residences because he concluded the available market date indicated this was the only strata needing adjustment at that time). The Taxpayers do not agree that this was proper and insist the City should have adjusted “all” assessments in the Town downward in tax year 2008. The board, however, can only decide whether abatements are warranted for the Unimproved Lot and Condominium that are the subject of this appeal, not on how all other properties should have been assessed.

1. The Unimproved Lot

The Taxpayers paid the seller \$74,900 for the Unimproved Lot in May, 2007, the price at which it was listed for sale (after a prior price reduction by the seller). In their arguments, they cited sales of three other Misty Lane lots: two sold for \$72,000 and \$68,533 in 2007 and one sold for \$56,000 in 2009. (See Taxpayer Exhibit No. 1.) The Taxpayers did not provide the assessment-record cards for these lots (as required by Tax 201.33), making it harder to determine their comparability. According to the testimony of Mr. Peasley, one of the Taxpayers, these three lots were smaller in size (about one acre each) in comparison to the Unimproved Lot (39 Misty Lane, 4.45 acres). This size difference, all other things being equal, could reasonably account for a higher value for the Unimproved Lot.

The Taxpayers submitted an appraisal (Taxpayer Exhibit No. 2) performed for financing purposes (after this lot was improved with a residence later in 2008) which mentions a “site value” of \$72,900 (as a component of an overall value estimate of \$321,652 using the cost approach). No supporting documentation was submitted with the appraisal as to the sales relied upon to arrive at this site value nor was the appraiser present to provide such information; both limit the weight that can be placed on this estimate.

The Taxpayers also presented graphs based on the Case-Shiller index of national housing prices to show steep declines occurred in the real estate market. The board is unable to give this evidence material weight with respect to the issue of whether the Property is overassessed because the index, whatever its merits, is too general in nature and pertains to some extent to national market declines occurring after 2008. What is more relevant than this data, however, is a showing of how prices were moving in the City for properties similar to the Property on or before the assessment date (April 1, 2008), but the Taxpayers did not present persuasive evidence on this issue.

The City Assessor stated he estimated the market value of the Unimproved Lot at \$78,800 for the purpose of assessing the LUCT and the Taxpayers paid this tax without objection when they purchased the Property in 2007. The City Assessor noted the buyers’ obligation to pay the LUCT as part of the purchase is spelled out in the sales agreement the Taxpayers signed in order to purchase the Unimproved Lot. (In response, Mr. Peasley testified the LUCT was a ‘bit of a surprise’ to them and he tried, without success, to have the seller pay it.)

If the LUCT is considered , the total consideration paid for the bundle of property rights (fee simple interest from the seller plus release of the RSA 79-A:5, VI current use contingent

lien) acquired by the Taxpayers would be \$86,680 (which compares to an assessed value of \$86,300). The City Assessor stated at the hearing, however, that he felt an abated assessment of \$78,800 would be fair and reasonable and result in proportionality. The board agrees, notwithstanding the Taxpayers' arguments for an even lower assessment (to \$70,000).

The board finds the Taxpayers failed to prove further market declines require such a large abatement on the Unimproved Lot. The evidence, viewed as a whole, supports the conclusion an assessment of \$78,800 for tax year 2008 for the Unimproved Lot is proportional and the assessment should be abated only to this value.

2. The Condominium

Turning to the second parcel comprising the Property, the board finds the Taxpayers failed to meet their burden of proving any abatement is warranted on the Condominium (419 Ledgeview). At the hearing, the Taxpayers argued this assessment should be abated to the \$160,000 - \$165,000 range (from the assessed value of \$174,200). An abatement to \$165,000 would be about a 5.2% reduction in the assessment.

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). Moreover, arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979).

The board finds the evidence as a whole supports the proportionality of the assessment and no abatement is warranted. This evidence includes the sale of 428 Ledgeview in May, 2007 for \$185,000. (See Municipality Exhibit A.) The City assessor noted, and this exhibit confirms,

that there were two phases of condominium construction thirteen years apart (1987 and 2000) and that 428 Ledgeview, like the Condominium, both have a 2000 “year built” designation. This could account for higher market values, compared to units from the older phase (such as 404 and 416 Ledgeview, which sold in May and July, 2008 for \$160,000 and \$173,000, respectively). Consequently, the board is not persuaded the Condominium was overassessed in 2008.

3. Summary

In summary, the board finds an abatement is warranted for the Unimproved Lot, but not the Condominium. If the taxes have been paid, the amount paid on the value in excess of \$78,800 for the Unimproved Lot 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

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Jeff and Kira Peasley, 419 Ledgeview Drive, Rochester, NH 03839, Taxpayers; and City of Rochester, Assessing Department, 31 Wakefield Street, Rochester, NH 03867.

Date: January 5, 2011

Anne M. Stelmach, Clerk