

Governor's Crossing LLC

v.

City of Laconia

Docket No.: 24885-09PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 2009 total assessment of \$1,754,500 on the following seven lots (collectively, the "Property"):

Map 165/Lot 497-14.1, 19 Sterling Drive ("Lot 1") - \$315,700 (land \$76,700; building \$239,000), a single family home on 0.16 acres;
Map 170/Lot 497-14.4, 33 Sterling Drive ("Lot 4") - \$206,100 (land \$80,900; building \$125,200), a partially constructed, single family home on 0.39 acres;
Map 170/Lot 497-14.5, 35 Sterling Drive ("Lot 5") - \$195,300 (land \$82,200; building \$113,100), a partially constructed, single family home on 0.43 acres;
Map 170/Lot 497-14.6, 37 Sterling Drive ("Lot 6") - \$165,200 (land \$80,300; building \$84,900), a partially constructed, single family home on 0.38 acres;
Map 170/Lot 497-14.7, 39 Sterling Drive ("Lot 7") - \$196,500 (land \$79,500; building \$117,000), a partially constructed, single family home on 0.36 acres;
Map 170/Lot 497-14.73, 120 Sterling Drive ("Lot 73") - \$359,500 (land \$77,500; building \$282,000), a single family home on 0.24 acres; and
Map 170/Lot 497-14.75, 100 Sterling Drive ("Lot 75") - \$316,200 (land \$77,300; building \$238,900), a single family home on 0.23 acres.

(The Taxpayer also owns, but is not appealing, a number of other lots that are either partially or entirely in current use and the parties do not dispute the proportionality of those assessments.)

For the reasons stated below, the appeal for abatement on the Property is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment on the Property 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 total assessment was higher than the general level of assessment in the municipality. Id.

The Taxpayer, represented by Richard P. Letendre, argued the total assessment on the Property was excessive because:

- (1) he disagreed with the City's conclusions regarding how complete the houses on two of the lots were as of the April 1, 2009 assessment date (as Lot 5 was only 40% complete, not 55%, and Lot 6 was only 40% complete, not 60%);
- (2) land values should be reduced to about \$48,000 per lot (based on the land values estimated by Vision Government Solutions, Inc. ("Vision") during a city-wide revaluation in 2010);
- (3) Lots 73 and 75 sold after the assessment date with sales prices lower than their assessed values;
- (4) Lots 4, 5, 6 and Lot 7 share a common driveway which negatively impacts their market values; and
- (5) the assessments should be further abated to reflect a total market value of \$1,382,650, based on the following values for the individual parcels (as shown in Section G of the appeal document): Lot 1 - \$290,000; Lot 4 - \$155,350; Lot 5 - \$118,800; Lot 6 - \$87,150; Lot 7 - \$129,350; Lot 73 - \$303,000; and Lot 75 - \$299,000.

The City argued the total assessment, as already abated, was proper because:

- (1) the City lowered the assessments on five of the seven lots under appeal at the local level (after receiving the Taxpayer's abatement request);
- (2) four non-appealed lots in the same development as the Property sold during 2008 and have assessment-to-sales ratios ranging from 0.95 to 1.04, which show the assessments are reasonably proportional to market values (see Municipality Exhibit A, p. 7);
- (3) the sale prices of five additional house lots in 2008 and 2009 ranged from \$80,000 to \$400,000, which is evidence the Taxpayer's lower market value estimate (about \$48,000 per lot) is not reasonable (id., p. 8);
- (4) all properties in the City under construction as of the assessment date are reviewed annually (as close to the assessment date as possible) by a single staff member who uses a chart to determine percent of completion on a consistent basis; and
- (5) the Taxpayer failed to meet its burden of proving disproportionality and the appeal for further abatement should be denied.

After the July 11, 2012 hearing, the board began its deliberations and examined more closely the evidence presented, including the assessment-record cards ("ARC's") for each lot, three of which were completed (the "Completed House Lots" -- Lots 1, 73 and 75) and four which were partially completed (the "Partially Completed House Lots" -- Lots 4, 5, 6 and 7). This examination of the evidence raised questions regarding how the City assessed the Partially Completed House Lots. For example, a review of the ARC on Lot 4 indicates the City's opinion that it was 35% complete; however, the assessment was calculated by taking the replacement cost new multiplied by 65%, not 35%. Pursuant to its July 25, 2012 Order, the board reopened

the hearing on August 21, 2012 to receive "additional documentation and testimony from the City and the Taxpayer" to answer these questions.

During the August 21, 2012 reopened hearing, the City's assessor (Jon Duhamel) stated he now agreed with the Taxpayer's position regarding the percent completion (40%) of Lots 5 and 6 as of the April 1, 2009 assessment date. Mr. Duhamel also acknowledged the City had in fact erred in how it calculated the building values on all four of the Partially Completed House Lots, validating the concerns expressed by the board in the July 25, 2012 Order. Additionally, he presented newly modified ARC's showing lower building values and newly calculated total assessments for these four lots. (See Municipality Exhibit A -- 8/21/12.) Finally, he indicated the City will process tax refunds based on these newly calculated assessed values.¹

The parties did not dispute the level of assessment in the City was 105.7% in tax year 2009, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence presented, the board finds the total assessment on the Property should be abated to \$1,624,300 for the reasons stated below. The appeal is therefore granted.

Assessments must be based on market value. See RSA 75:1; and Appeal of Andrews, 136 N.H. 61, 64 (1992). The board disagrees with the Taxpayer's argument that the land values established by the City's contracted assessor (Vision) for a subsequent year (2010) are probative of the proportionality of the assessments for tax year 2009. The City explained assessed values changed in 2010 throughout the City because of a revaluation. These changes included new delineation of neighborhood codes and new land and building values.

¹ The board's July 25, 2012 Order stated the City should come to the reopened hearing prepared to discuss the "City's assessment practices on other lots in the City with incomplete construction," but Mr. Duhamel was not able to answer the board's questions. To help further the goal of proportionality, the City should review the assessments of other partially complete properties to ensure the percent complete calculations were applied correctly.

In response to the Taxpayer's questions regarding the updated land values on the Property, the City presented market evidence regarding four lot sales in the same development, as well as five additional lot sales in 2008 and 2009. (See Municipality Exhibit A.) The board finds the City's sales and analysis support the proportionality of the assessed land values.

Proportionality requires that the calculations employed by the municipality to arrive at a proportional assessment based on market value (such as the percent complete estimates involved in this appeal) are reasonable and proper. While the Taxpayer failed to present market value evidence to establish the disproportionality of the assessments on the Completed House Lots, the Taxpayer did persuade the City (prior to the reopened hearing) the houses on Lots 5 and 6 were 40% (not 55% or 60%, respectively) complete as of the assessment date, resulting in abatements on these lots, but the board finds additional adjustments are needed to the City's abatement calculations for the four Partially Completed House Lots. The board's specific findings regarding these issues are detailed below.

1. The Completed House Lots (Lots 1, 73 and 75)

The Taxpayer completed construction of the houses on three of the seven lots (Lots 1, 73 and 75) prior to the April 1, 2009 assessment date. According to the Taxpayer, Lot 73, assessed at \$359,500, sold for \$316,350 in February, 2011, 22 months after the assessment date; and Lot 75, assessed at \$316,200, sold for \$295,000 in June, 2011, 26 months after the assessment date. The Taxpayer argued the assessments should be abated because these lots sold for less than their assessed values. The board does not agree.

Trending the two sales back to the April 1, 2009 assessment date (at 10% per year) leads to indications of value of approximately \$374,300 for Lot 73 and \$358,900 for Lot 75; these indications are above the equalized value of the assessments. (For Lot 73, \$359,500 divided by

105.7% = \$340,100, rounded, market value indication; and for Lot 75, \$316,200 divided by 105.7% = \$299,100, rounded, market value indication.) There is no dispute the real estate market was adversely impacted by the financial turmoil that surfaced in the fall of 2009; the board finds a time adjustment in the approximate range of 10% per year is reasonable.

As for Lot 1, the Taxpayer testified this was used as the development's "model home" and he is now "asking" \$299,000 for it. Comparing the 2009 assessed value of \$315,700 to this asking price (or even the amount the Taxpayer stated he would "accept") does not support a finding of disproportionality. Consequently, the board finds the Taxpayer did not meet its burden of proving the Completed House Lots were disproportionately assessed (at \$315,700 for Lot 1, \$359,500 for Lot 73 and \$316,200 for Lot 74) in tax year 2009.

2. The Partially Completed House Lots (Lots 4, 5, 6 and 7)

The parties agree the four remaining lots (Lots 4, 5, 6 and 7) had houses that were only partially completed as of the April 1, 2009 assessment date. They agree Lots 4 and 7 were 35% complete. As noted above, while there was prior disagreement about the degree of completion of Lots 5 and 6, by the time of the reopened hearing the City agreed with the Taxpayer that they were 40% complete.

The City submitted new ARCs to the Taxpayer and the board during the reopened hearing. Upon review of those ARCs, the board finds they contain additional errors and inconsistencies because the assessor did not use the same land values and building base rates utilized during the calculation of the original 2009 assessments (see Municipality Exhibit A -- 8/21/12). Additionally, the assessor did not apply the percent complete to the "features" values shown on the ARCs, which is separate from the building values. Therefore, the board finds further corrections are necessary.

The City erred in its calculations on the new ARCs in three respects: (1) the City applied the percent complete to a building base rate different than the 2009 base rate; (2) the City did not apply the percent complete to the extra “features” values; and (3) the City used different land values than the 2009 land values. Correcting for each of these errors, the board finds the abated assessments for Lots 4, 5, 6 and 7 should be \$147,900, \$178,800, \$163,700 and \$142,500, respectively, calculated as follows:

Board’s Calculations: 2009 Corrected Assessments for Partially Completed House Lots					
	Replacement Cost New & Features (as shown on ARC’s)	Agreed % Complete	[Replacement Cost New + Features Values] x % Complete	Land Assessment on ARC’s	Corrected Total Abated Assessments
Lot 4	\$188,809 \$2,500	35%	\$67,000	\$80,900	\$147,900
Lot 5	\$233,546 \$8,000	40%	\$96,600	\$82,200	\$178,800
Lot 6	\$206,114 \$2,500	40%	\$83,400	\$80,300	\$163,700
Lot 7	\$179,955 \$0	35%	\$63,000	\$79,500	\$142,500

The board considered all of the other arguments presented by the Taxpayer before concluding the Taxpayer failed to meet its burden of proving larger abatements were warranted for tax year 2009. For example, the Taxpayer noted these four lots have a shared driveway that negatively impacts value. The City, however, made a negative 5% adjustment to each of these lots to account for this factor and the Taxpayer presented no evidence that would allow the board to conclude a larger adjustment is warranted.

3. Summary

In summary, the board finds the total assessment on the Property should be abated to \$1,624,300 for tax year 2009, comprised of the following lot assessments: Lot 1 - \$315,700 (unabated); Lot 4 – abated to \$147,900; Lot 5 – abated to \$178,800; Lot 6 – abated to \$163,700; Lot 7 – abated to \$142,500; Lot 73 - \$359,500 (unabated); and Lot 74 - \$316,200 (unabated). The appeal is therefore granted.

If the taxes have been paid, the amount paid on the value in excess of \$1,624,300 for tax year 2009 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

Albert F. Shamash, Esq., Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Richard P. Letendre, 368 Edgewater Drive, Gilford, NH 03249, representative for Governor's Crossing, LLC, Taxpayer; and Chairman, Board of Assessors, City of Laconia, 45 Beacon Street East, Laconia, NH 03246.

Date: 11/5/12

Anne M. Stelmach, Clerk