

Irma and Richardson Fowle

v.

City of Lebanon

Docket No.: 25523-10PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “City’s” 2010 assessment of \$314,500 on Map 8/Lot 2-902, a residential condominium located at 365 North Main Street, Unit I-2 (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was 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 Property’s assessment was higher than the general level of assessment in the municipality. Id. The board finds the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Taxpayers purchased the Property, located in the Quail Hollow development, in 2004;
- (2) as explained in Taxpayer Exhibit No. 1, the Property is an “interior” unit, not an end unit, and end units have different amenities (such as cathedral ceilings) and therefore should have higher market values;

(3) Taxpayer Exhibit No. 2 shows how assessments increased at varying rates for different units in Quail Hollow between 2006 and 2010;

(4) Quail Hollow is a restricted “55+ senior community” which limits the pool of potential buyers of the Property;

(5) because of the “housing collapse” and other factors, the “fair market value” of the Property was “around \$275,000” in 2010; and

(6) the assessment should be abated to reflect a \$275,000 market value.

The City argued the assessment was proper because:

(1) the City performed a revaluation in tax year 2010 but was not able to enter and inspect each of the units in Quail Hollow;

(2) these units vary in quality and finish and some, unlike the Property, have no second floor access;

(3) while the City is sympathetic to the plight of the Taxpayers, who are senior citizens with modest incomes, the City is obligated to base its assessments on market data which the City has compiled in the “Analysis Report” (Municipality Exhibit A);

(4) the market does not necessarily value end units higher than interior units because end units are more exposed (to the elements) and have higher heating costs.

(5) the two other developments mentioned by the Taxpayers are not comparable because one (“The Falls”) consists of single family homes, not attached condominiums, and the other (“Pinewood Village”) is comprised of older units in a different municipality (the Town of Hanover); and

(6) the appeal should be denied.

There was no dispute the level of assessment in tax year 2010 was 97.2%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to meet their burden of proving disproportionality. The appeal is therefore denied for the following reasons.

The Taxpayers explained they were elderly and have lived on modest incomes. However, as prescribed in RSA 75:1, and, as the City argued, ad valorem assessments must be based on market value. Proportionality is determined by arriving at a reasonable estimate of market value adjusted by the level of assessment in the municipality. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003.); see also Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

To determine whether the Taxpayers met their burden of proof, the board considered and weighed 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” in evaluating the credibility and probative value of any evidence presented. 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).

The board considered, but was unable to place any weight, on the Taxpayers' emphasis on the fact the assessment on the Property increased by a different percentage in 2010 than other units. (See Taxpayer Exhibit Nos. 1 and 2.) The City completed a revaluation in that year and the purpose of a revaluation is to consider and incorporate new information about market values and correct for any errors in prior revaluations. It can be expected that assessments on different properties will increase or decrease at different rates as a result of a revaluation. Thus, the fact the assessment on the Property increased by a differing percentage relative to other properties is not probative of disproportionality. Among other things, the amount of the increase in the assessment in 2010 could be indicative of underassessment prior to the revaluation. The possible underassessment of other properties does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987). As noted above, the City's assessor stated some units had no second floor access and this fact may account for lower assessed values.

The City's Analysis Report (Municipality Exhibit A) presents evidence of sales of condominiums in the same complex which occurred between April 8, 2008 and September 10, 2010. These properties sold in a range of \$300,000 to \$356,533. The board finds the assessment of \$314,500, when equalized by the 97.2% level of assessment in tax year 2010 ($\$314,500$ divided by 97.2% equals $\$323,600$ rounded), is within this range of values.

In addition, there is credible evidence the Property's assessment was arrived at using the same methodology as in assessing other properties in the complex and this is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

As stated above, the focus of this tax abatement appeal is proportionality, requiring a review of the assessment to determine whether the Property is assessed at a higher level than the

level generally prevailing. Appeal of Andrews, 136 N.H. 61, 64 (1992); Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985). 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).

For all these reasons, the board finds the Taxpayers failed to prove the Property was disproportionately assessed in tax year 2010. 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).

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Irma and Richardson Fowle, 365 N. Main Street - Cottage I-2, West Lebanon, NH 03784, Taxpayers; and Chairman, Board of Assessors, City of Lebanon, 51 North Park Street, Lebanon, NH 03766.

Date: 8/9/13

Anne M. Stelmach, Clerk