Richard Balagur

v.

City of Concord

Docket No.: 25625-10PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 2010 assessments of the following residential units in the "Edgewood Heights" condominium:

MAP/LOT	ADDRESS	ASSESSMENT (BUILDING ONLY)
110C/3/34	58 BRANCH TURNPIKE – U-A11	$75,200
110C/3/36	58 BRANCH TURNPIKE – U-A13	$80,400
110C/3/37	58 BRANCH TURNPIKE – U-A14	$75,200
110C/3/39	58 BRANCH TURNPIKE – U-A16	$86,900
110C/3/40	58 BRANCH TURNPIKE – U-A17	$86,900
110C/3/41	58 BRANCH TURNPIKE – U-A18	$85,400
110C/3/46	58 BRANCH TURNPIKE – U-A23	$90,400

(the "Properties"). (The Taxpayer also owns, but did not appeal the $56,500 assessment of a condominium unit located on Map 114K/1/1109, and the parties agree it was proportionately assessed.) For the reasons stated below, the appeals for abatement are denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments were 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 Properties' assessments were higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The parties did not dispute that the level of assessment in the City was 99.7% in tax year 2010, the median ratio calculated by the department of revenue administration.

At the hearing, the parties agreed the board would take official notice of the evidence in a related case, Robert C. Hamilton v. City of Concord, Docket No. 25942-10PT, heard on January 13, 2014.

The Taxpayer argued the assessments were excessive because:

(1) an independent fee appraisal prepared by Chris Richardson of Chris Richardson Appraisal Service ("Richardson Appraisal") estimated the market value of Unit 71 (A23) was $63,000 as of April 6, 2010, and testified he made no adjustments for the amenities (clubhouse, pool, tennis court) because the market did not reflect any difference in value and there was no measurable difference in market value for first, second or third floor locations as well as end or interior units;

(2) the Taxpayer has owned the Properties for approximately 20 years and Unit A23 was fully remodeled at a cost of $10,000 to $15,000 for the purpose of selling and no "refurbishing" has been completed on the other units;

(3) Unit A23 was listed for sale from April 14, 2010 to September 30, 2010 at an asking price of $85,000 with owner financing but did not sell;

(4) Unit A23 was subsequently leased for approximately $750 per month with the other units leasing at $700 per month; and

(5) the values of the Properties should be as follows which were based on a percentage of the appraised value of Unit A23.

MAP/LOT	UNIT	MARKET VALUE
110C/3/34	U-A11	$52,400
110C/3/36	U-A13	$56,000
110C/3/37	U-A14	$52,400
110C/3/39	U-A16	$60,600
110C/3/40	U-A17	$60,600
110C/3/41	U-A18	$59,500
110C/3/46	U-A23	$63,000

The City argued the assessments were proper because:

(1) the City's residential appraiser, Dixie Lee Brown, prepared a restricted use appraisal report as of April 1, 2010, of Unit A23 (which is the only unit in "good" condition), as well as analyzing Units A18 and A17 (both in "average" condition) ("Brown Report #1," Municipality Exhibit B) and concluded with a market value estimate for Unit A23 of $91,000 and market value estimates of $85,000 each for Units A18 and A17;

(2) Ms. Brown also prepared a restricted use appraisal report of Unit A14 which she considered valid for Units A11 and A13 (two interior units) and also provided an additional grid for a second floor exterior Unit A16 ("Brown Report #2," Municipality Exhibit C) and concluded with market value estimates of $78,000 each for Units A14, A11 and A13 and $87,000 for Unit A16;

(3) the Richardson Appraisal estimates the market value of only one unit and the other units have differing conditions and sizes and have not been analyzed;

(4) the Richardson Appraisal is also flawed because it utilizes the wrong size of Unit A23, made insufficient adjustments to the comparable sales for differences in size (a conservative $15 per square foot for differences greater than 100 square feet), no adjustment for balconies, porches, pools, tennis courts and other amenities and his location adjustment is unsupported and not credible;

(5) the sale of Unit 81 in Edgewood Heights used in the Richardson Appraisal was "unqualified" by the City because it was vacant for one year and was on the market for only 50 days;

(6) the income approach to value utilized in the Richardson Appraisal (which estimated a monthly market rent of $700 and a gross rental multiplier of 90) is not appropriate and should be rejected; and

(7) the abatements should be denied.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not carry his burden of proving the disproportionality of the assessments and therefore the appeals are denied.

"In an abatement case, the Taxpayer has the burden of proving by a preponderance of the evidence that the Property at issue was assessed disproportionately to other property in the Town." Appeal of Sokolow, 137 N.H. 642, 643 (1993). When a taxpayer owns more than one lot within a given municipality, a request for abatement will always require consideration of the assessment on any other parcels for which the owner is also the taxpayer. Appeal of City of Lebanon, 161 N.H. 463 (2010); Appeal of Town of Sunapee, 126 N.H. 214 (1985).

The Taxpayer did not present any credible evidence of the Properties' market values. These values would then have been compared to the Properties' assessments and the general level of assessment in the City. To carry his burden, the Taxpayer should have made a showing the Properties' market values were less than $580,400 (the total assessment of the Properties), adjusted by the level of assessment (99.7%). See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

The legislature created the board as a tribunal specializing in valuation issues (property tax and eminent domain) and requiring the board members be "learned and experienced in questions of taxation or of real estate valuation and appraisal…." (RSA 71-B:1) As a specialized tribunal, the board has de novo appellate authority to review all the evidence submitted. To determine whether an abatement is warranted, the board considers and weighs the market value 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, in making its findings where there is conflicting evidence, the board must determine for itself the credibility of the witnesses and the weight to be given the testimony of each because "judgment is the touchstone." 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 a consequence, the board weighed all the evidence and utilized its judgment in analyzing the limited market data in arriving at a highest and best use and value conclusion for the Properties.

The Taxpayer relied upon the Richardson Appraisal to establish the disproportionality of the assessment of Unit A23 and, with some modifications, the other six units. The City relied on the two appraisals prepared by Ms. Brown (Brown Report #1 and Brown Report #2) to defend the proportionality of the City's assessments of the individual units. However, the board could not place much weight on any of the appraisals for several reasons.

Most importantly, the Richardson Appraisal and Brown Reports #1 and #2 concluded the "highest and best use[1]" of the condominium units was for continued use as residential condominium units, and the most likely buyer of the units would be individuals who purchase them for owner-occupancy. "Based on these factors, the existing real estate market and general trends of the area, highest and best use of the property is considered to be its continued use as a residential garden style condominium." (Brown Report #1, p. 7 and Brown Report #2, p. 7.) "The use of the real estate existing as of the date of value and as reflected in the appraisal is residential condominium unit. The highest and best use of the site is residential since the subject unit cannot be separated from the project." (Taxpayer Exhibit No. 1, unnumbered.)

Based on their highest and best use conclusions, therefore, each appraiser utilized the sales comparison approach and arrived at a market value estimate of a single condominium unit, based upon sales of other, individual residential condominium units.

While the board agrees that continued residential use of the individual units is most likely, the board finds the most likely buyer of the Properties (all seven units) would be an investor who would purchase the Properties for its income potential and would continue to lease the units as the Taxpayer has done for more than 20 years.

The board's finding is supported by the testimony of the Taxpayer, who indicated he attempted to sell a single unit (A23) and received no offers. He stated the marketability of the unit was diminished because Edgewood Heights has more than 10% "investor ownership," and a potential buyer of a unit attempting to obtain financing through "Fannie Mae" and "Freddie Mac" would be subjected to stricter lending requirements (that may include larger than normal

[1] Highest and best use is defined as "The reasonably probable and legal use of vacant land or improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value." The Appraisal Institute, The Appraisal of Real Estate, 11th ed., (1996), p. 50.

down payments, higher credit scores, etc.). This finding is further supported by the record in the Hamilton appeal, in which the City submitted evidence indicating Edgewood Heights was not eligible for financing through the Federal Housing Administration ("FHA"). (See Municipality Exhibit N - Hamilton appeal.)[2]

However, the Taxpayer did not indicate he made any attempt to sell the Properties in their entirety to an investor. An investor (purchasing the Properties for their income potential) or an appraiser of the Properties might consider the sales comparison approach to value, but would need to utilize "bulk sales" of residential condominium units or apartments to arrive at a credible opinion of market value. In the board's experience, however, such an investor or appraiser would place more weight on the income capitalization approach to value (which considers the income producing potential of the units, less operating expenses, and capitalizes the net operating income into a market value estimate).

Neither appraiser completed an income capitalization approach to value of the Properties, although the Richardson Appraisal estimated a market rent for a single unit of $700 per month, and based on a single sale, calculated a gross rent multiplier of 90. A cursory analysis of a single sale, however, is not an acceptable income approach and does not result in a credible indication of market value.

Ms. Brown considered, but did not develop, the income approach because "residential condominium properties are purchased for owner-occupation, and not for their potential income stream." While Ms. Brown's statement may be true in some situations, in the specific instance

[2] In the board's experience, FHA may provide financing for residential condominium units in developments that meet several different criteria, including but not limited to, owner occupied units totaling 50% or more of the total number of units, and no single investor owning 10% or more than the total number of units. The record indicates Edgewood Heights has a total of 120 units. "Does any single entity (the same individual, investor group, corporation, etc.) own more than 10% of the total units in the project? Yes. 65 of the units are investor owned, predominately by two entities." (Taxpayer Exhibit No. 9, p. 1.) Based on the record, the Properties (in Edgewood Heights) would not satisfy either criterion.

of the Properties (7 units owned by the same property owner for their income stream for over 20 years), both parties' appraisers should have attempted to obtain income and expense information from the Taxpayer in order to complete an income capitalization approach to determine the credibility of their highest and best use conclusions.

In this appeal, the historic use of the Properties (for investment purposes) dictates the completion of a thorough income approach to value as a step in the determination of their highest and best use. Without that approach to value, the board cannot determine if a sale of one of the units to an owner-occupant or a "bulk sale" to an investor would result in the highest value and, therefore, their highest and best use.

The Taxpayer did not submit any income and expense information regarding the Properties to the board. Nor did the Taxpayer submit any information regarding "bulk" sales of residential condominium units and/or apartments to investors. Therefore, there is no evidence before the board to allow it to find the assessments of the Properties were disproportional.

For all these reasons, the appeal is 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, <u>not the date this decision is received</u>. 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

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Michele E. LeBrun, Chair

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Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Richard Balagur, 20 West Park Street - Suite 1, Lebanon, NH 03766, Taxpayer; and Danielle C. Pacik, Esq., Deputy City Solicitor, 41 Green Street, Concord, NH 03301.

Date: 4/28/14

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Anne M. Stelmach, Clerk