Marcel LeBel Trust

v.

City of Laconia

Docket No.: 25786-10PT

Marcel LeBel Revocable Trust

v.

City of Laconia

Docket No.: 25787-10PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" tax year 2010 assessments of:

(1) $571,600 (land $509,700; building $61,900) on Map 38/Lot 67/8, 106 Eastman Shore Road North, a camp on 0.73 acres (in Docket No. 25786-10PT); and

(2) $607,500 (land $516,000; building $91,500) on Map 36/Lot 67/1, 114 Eastman Shore Road North, a camp on 0.78 acres (in Docket No. 25787-10PT).

By consent of the parties, the board held a consolidated hearing on these two appeals. For the reasons stated below, the appeals for abatement are granted.

Each 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, each Taxpayer must show the Property's assessment was higher than the general level of assessment in the municipality. Id. The board finds the Taxpayers met their burden of proving disproportionality.

The Taxpayers argued the assessments were excessive because:

(1) the two camp-style houses are similar in style and size and were built in 1952 and 1953 on concrete blocks (compliant with the 1952 building code standard) and have not been upgraded since that time;

(2) as of the assessment date, each camp did not have insulation and the electricity and plumbing have not been upgraded;

(3) there is no area to launch a boat along the rocky waterfrontage and any boat must be taken to a public launch site to access the water;

(4) the comparable sales and photographs presented (see Taxpayer Exhibit Nos. 2 and 3) show that the market value of these camps is lower than the City's assessments;

(5) this conclusion is further confirmed by the February 24, 2011 "Comparative Market Analysis" (Taxpayer Exhibit No. 1) which states the fair market value of each camp was $350,000 to $400,000;

(6) the City's only comparable sale (128 Leighton Avenue North) is much larger, much newer and has a waterfront capable of launching a boat and does not support the assessments under appeal; and

(7) the assessments should be abated based on a market value of not more than $350,000 to $400,000 for each camp.

The City argued the assessments were proper because:

(1) the City performed a revaluation in 2010 and has performed annual updates since that time;

(2) Municipality Exhibit A shows how the City developed its "land curve" and its building square foot analysis;

(3) some of the comparative assessments used by the Taxpayers are 2012 values, not 2010 values (as shown in Municipality Exhibit B); and

(4) the appeals should be denied.

The parties agreed the level of assessment in the City was 98%, the median ratio calculated by the department of revenue administration.

After the consolidated hearing, the board directed its review appraiser (Cynthia L. Brown, CNHA) to conduct an inspection of the Property, review all evidence submitted at the hearing and perform an independent valuation of each lot. Ms. Brown filed her Summary Appraisal Report ("Report") on October 18, 2013. Copies of the Report were mailed to the parties and they were given twenty (20) days to submit any written comments, but none have done so.

Board's Rulings

Based on the evidence, the board finds proportional assessments for tax year 2010 are $441,000 for 106 Eastman Shore Road North and $450,800 for 114 Eastman Shore Road North; these findings are based upon estimated market values of $450,000 and $460,000, respectively, adjusted by the 98% level of assessment. The appeals are therefore granted for the following reasons.

These two adjacent lots are relatively modest in size and improvements. The improvements consist of small, camp-style dwellings (of approximately 750 square feet and 900

square feet, respectively) constructed in the early 1950's by close relatives (a father and two uncles). These dwellings had not been renovated or updated as of the assessment date. While each lot has waterfront on Winnisquam Lake (approximately 150 feet), the topography is steeply sloped with an embankment that requires boats to be launched via public access, not the waterfront. These findings are supported by the testimony and exhibits presented at the hearing and the descriptions in the Report, including the photographs in Addendum A which show multiple, fairly steep steps necessary to get to the water from each dwelling.

As the parties appear to recognize, the proportionality of each assessment must be determined based on market value adjusted by the level of assessment in the City. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). In determining proportionality, all relevant factors affecting market value must be considered. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). The Taxpayers argued their properties had market values in the range of $350,000 to $400,000 as of the assessment date. The City's assessments, on the other hand, reflect considerably higher market value indications (approximately $583,000 and $620,000, respectively).

The board finds the best evidence of the market value of each lot is contained in the Report. Ms. Brown inspected each lot and its improvements and detailed all of the features which likely impacted market value. She found three comparable waterfront sales on Winnisquam Lake (one in the City, one in Meredith and one in Sanbornton),[1] and made reasonable adjustments, where appropriate for time and conditions of sale, location, topography, size, quality of improvements and other differences. As stated in the Report (p. 17),

[1] The board finds these comparables are more indicative of the market value of each lot and are better supported than the sales shown in Taxpayer Exhibit No. 1, the Comparative Market Analysis provided to the Taxpayers by a realtor who did not testify at the consolidated hearing of these appeals.

she concluded the market values of each lot as of the April 1, 2010 assessment date were as follows: $450,000 for 106 Eastman Shore Road and $460,000 for 114 Eastman Shore Road. Neither party submitted any written comments in response to the Report. The board finds, using its judgment and experience, the independent value determinations in the Report are reasonable and well supported.

For all of these reasons, the board finds the assessment on 106 Eastman Shore Road should be abated to $441,000 and the assessment on 114 Eastman Shore Road should be abated to $450,800. The appeals are therefore granted.

If the taxes have been paid, the amount paid on the value in excess of $441,000 for 106 Eastman Shore Road and $450,800 for 114 Eastman Shore Road for tax year 2010 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, <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

_____
Michele E. LeBrun, Chair

_____
Albert F. Shamash, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Marcel LeBel Trust and Marcel LeBel Revocable Trust, c/o Susan LeBel, 11201 Oakshore Lane, Clermont, FL 34711, Taxpayers; and Chairman, Board of Assessors, City of Laconia, 45 Beacon Street East, Laconia, NH 03246.

Date: 11/19/13

_____
Anne M. Stelmach, Clerk