

Puleo Family Exempt Trust, et al.

v.

City of Laconia

Docket No.: 25873-10PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “City’s” 2010 assessment of \$240,600 on Map 196/Lot 322/11 (the “Property”), a vacant 0.41 acre waterfront lot. (According to the City’s checklist, the Taxpayers also own another lot, consisting of approximately 65 acres encumbered by conservation easements, Map 29/Lot 155-5, and the parties agreed that lot was proportionally assessed in tax year 2010.) For the reasons stated below, the appeal for abatement is granted.

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 met this burden.

The Taxpayers, represented by Richard Puleo at the hearing, argued the assessment was excessive because:

(1) in tax year 2010, the City increased the assessment from \$51,400 to \$240,600 (after reduction from a slightly higher preliminary value of \$253,300) and, while the prior assessment (\$51,400) was “pretty low,” the new assessment is “too high”;

(2) the Property is undeveloped, with no driveway, no water and no septic system and is simply a “forest”;

(3) to transform the Property into a buildable lot will require expenditures of approximately \$50,000 to \$60,000; and

(4) the assessment should be abated to \$180,600 and the appeal should be granted.

The City argued the assessment was proper because:

(1) the City performed a full revaluation of all properties in tax year 2010;

(2) the assessing company responsible for the 2010 revaluation (Vision Appraisal) did not distinguish between a vacant, unimproved lot and a vacant improved lot;

(3) Municipality Exhibit A, reflective of how the City established land values, supports the proportionality of the assessment; and

(4) the appeal should be denied.

The parties did not dispute the level of assessment in tax year 2010 was 98%, the median ratio calculated by the department of revenue administration.

The board heard another appeal (Glidden v. City of Laconia, BTLA Docket No. 25784-10PT) involving an improved property near the Property on the same date as the hearing of this appeal; the parties agreed the board could take official notice of the evidence presented in the Glidden appeal and the board has done so in its deliberations.

Following the hearing, the board directed its review appraiser, Cynthia L. Brown, CNHA, to conduct an inspection of the Property, review all the evidence presented and perform an independent evaluation. Ms. Brown's Summary Appraisal Report (the "Report") was completed on January 30, 2013. On that date, the parties were each sent a copy of the Report and given an opportunity to submit written comments within twenty (20) days, but neither party did so.

Board's Rulings

Based on the evidence presented, the board finds the Taxpayers met their burden of proving disproportionality. The appeal is granted and the assessment for tax year 2010 is abated to \$186,200 for the reasons discussed below.

The Property is a 0.41 acre undeveloped lot with 100 feet of frontage on the southerly side of Pickerel Cove and its highest and best use is for "single family residential development." (Report, p. 6.) The waterfront is shallow and sandy on the west side and large rocks protrude on the east side. Mr. Puleo testified Pickerel Cove suffers from milfoil infestation which Ms. Brown also noted. (Id.)

The Taxpayers owned the Property for over 30 years (with title dating back to a 1982 warranty deed included with the Report). They listed the Property in July, 2011 for an asking price of \$198,000 and sold the Property approximately 1½ years later, in December, 2012, for \$160,000. (Id., p. 1.)

Ms. Brown used the sales comparison approach to develop a range of values (\$167,000 to \$200,000) for the Property as of the assessment date (April 1, 2010), noting there was a "lack of vacant land sales." (Id., pp. 9-10.) The three sales she used in her analysis were located in the City, Moultonborough and Alton, respectively. In making her sale comparisons, Ms. Brown took note of the fact that the Property has an inferior topography (with a 20 foot drop in elevation

from the roadway) and requires installation of an on-site well and septic system for residential development. (Id., p. 8.)

The board notes the 2010 revaluation by Vision Appraisal did not take into account the undeveloped condition of the Property and the fact substantial additional costs would be incurred for clearing, stumping, grading and installation of both a well and septic system. The board also reviewed Municipality Exhibit A and was not persuaded the data presented supports the proportionality of the assessment, especially since it relies upon a “base developed site value” and the Property was not yet developed with even a well and septic system.

Weighing all of these factors, see Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975), the board finds the most reasonable estimate of the Property’s market value in tax year 2010 is \$190,000. This value is at the higher end of the range estimated by Ms. Brown, but is supported by the totality of the evidence presented and is further corroborated by the subsequent marketing of the Property in July, 2011 on the terms noted above.

Adjusting this \$190,000 market value estimate by the 98% level of assessment in the City, the board finds the assessment for tax year 2010 should be abated to \$186,200. The appeal is therefore granted.

If the taxes have been paid, the amount paid on the value in excess of \$186,200 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the City undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the City shall use the ordered assessment for subsequent years.

RSA 76:17-c, I and II.

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

Michele E. LeBrun, Chair

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: Puleo Family Exempt Trust & PJ Trust, Richard and Ruth Puleo, 53 Sprucewood Drive, Gilford, NH 03249, representative for the Taxpayers; and Chairman, Board of Assessors, City of Laconia, 45 Beacon Street East, Laconia, NH 03246.

Date: May 14, 2013

Anne M. Stelmach, Clerk