

Robert C. Hamilton

v.

City of Concord

Docket No.: 25942-10PT

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/3/28	58 BRANCH TURNPIKE – U-A05	\$77,400
110C/3/29	58 BRANCH TURNPIKE – U-A06	\$65,700
110C/3/30	58 BRANCH TURNPIKE – U-A07	\$82,800
110C/3/48	58 BRANCH TURNPIKE – U-B01	\$81,500
110C/3/50	58 BRANCH TURNPIKE – U-B03	\$80,900
110C/3/51	58 BRANCH TURNPIKE – U-B04	\$80,000
110C/3/55	58 BRANCH TURNPIKE – U-B08	\$84,300
110C/3/57	58 BRANCH TURNPIKE – U-B10	\$82,900
110C/3/58	58 BRANCH TURNPIKE – U-B11	\$82,400
110C/3/59	58 BRANCH TURNPIKE – U-B12	\$81,500
110C/3/60	58 BRANCH TURNPIKE – U-B13	\$79,700
110C/3/61	58 BRANCH TURNPIKE – U-B14	\$82,400
110C/3/72	58 BRANCH TURNPIKE – U-C01	\$87,000
110C/3/73	58 BRANCH TURNPIKE – U-C02	\$85,500
110C/3/74	58 BRANCH TURNPIKE – U-C03	\$65,700
110C/3/75	58 BRANCH TURNPIKE – U-C04	\$79,900
110C/3/76	58 BRANCH TURNPIKE – U-C05	\$77,400
110C/3/77	58 BRANCH TURNPIKE – U-C06	\$65,700
110C/3/78	58 BRANCH TURNPIKE – U-C07	\$82,700
110C/3/79	58 BRANCH TURNPIKE – U-C08	\$86,900

110C/3/80	58 BRANCH TURNPIKE – U-C09	\$86,900
110C/3/81	58 BRANCH TURNPIKE – U-C10	\$85,500
110C/3/82	58 BRANCH TURNPIKE – U-C11	\$75,200
110C/3/83	58 BRANCH TURNPIKE – U-C12	\$79,900
110C/3/84	58 BRANCH TURNPIKE – U-C13	\$79,900
110C/3/85	58 BRANCH TURNPIKE – U-C14	\$79,600
110C/3/86	58 BRANCH TURNPIKE – U-C15	\$85,500
110C/3/87	58 BRANCH TURNPIKE – U-C16	\$86,900
110C/3/88	58 BRANCH TURNPIKE – U-C17	\$86,900
110C/3/89	58 BRANCH TURNPIKE – U-C18	\$85,400
110C/3/90	58 BRANCH TURNPIKE – U-C19	\$75,000
110C/3/91	58 BRANCH TURNPIKE – U-C20	\$79,700
110C/3/92	58 BRANCH TURNPIKE – U-C21	\$79,700
110C/3/93	58 BRANCH TURNPIKE – U-C22	\$75,000
110C/3/94	58 BRANCH TURNPIKE – U-C23	\$85,400
110C/3/95	58 BRANCH TURNPIKE – U-C24	\$86,900

(the “Properties”). (The Taxpayer also owns, but did not appeal, three condominium units with a total, combined 2010 assessed value of \$370,600: 111C/1/60 - \$124,800 at 227 Loudon Road; 111C/1/91 - \$124,800 at 227 Loudon Road; and 61/2/ 51 - \$121,000 at 15 Wyman Street. The parties agree these three units were 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, Richard Balagur v. City of Concord, Docket No. 25625-10PT, heard on January 8, 2014.

The Taxpayer argued the assessments were excessive because:

- (1) Daniel M. Lascelle of Capital Appraisal Associates, Inc. prepared three appraisals (collectively, the “Lascelle Appraisals”): (Taxpayer Exhibit No. 1 – Unit 101 (C05); Taxpayer Exhibit No. 2 – Unit 109 (C13); and Taxpayer Exhibit No. 3 – Unit 120 (C24)) and estimated each of those units had a market value of \$65,000 as of April 1, 2010;
- (2) Chris Richardson of Chris Richardson Appraisal Service prepared three appraisals (collectively, the “Richardson Appraisals”): (Taxpayer Exhibit No. 4 – Unit 101 (C05); Taxpayer Exhibit No. 5 – Unit 109 (C13); and Taxpayer Exhibit No. 6 – Unit 120 (C24)) estimated the market value of those units were \$61,000, \$66,000 and \$63,000, respectively, as of April 1, 2010;
- (3) Mr. Richardson 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;
- (4) based on his analysis of the three units appraised by Mr. Lascelle and Mr. Richardson, the Taxpayer estimated the values of the three units as follows: Unit C05 - \$65,000; Unit C13 - \$65,500; and Unit C24 - \$64,000 (see Taxpayer Exhibit No. 7);
- (5) one unit in Edgewood Heights, (Unit 81), sold in April, 2009 for \$65,000 and is supportive of the Taxpayer’s opinion of market values of the units;
- (6) Mary McCarthy, a real estate agent with Fox Creek Management, testified the sale of Unit 81 was an arm’s-length transaction, the unit was an investment property and the only unit owned

by the owner who no longer wanted the “hassle” of dealing with the unit because he was moving to Belize, and when it sold, the owner gave back the buyer \$3,000 for closing costs; and

(7) the evidence supports the units are all overassessed and should be abated.

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 B10, a second floor exterior unit (“Brown Report #1,” Municipality Exhibit K) which estimated a market value of \$84,000;

(2) Ms. Brown also prepared a restricted use appraisal report, as of April 1, 2010, of Unit A05, a first floor exterior unit (“Brown Report #2,” Municipality Exhibit L) which estimated a market value of \$77,000;

(3) the Taxpayer’s appraisers relied heavily on the only Edgewood Heights sale (Unit 81) by giving it the most weight and which the City determined was “unqualified” because it was vacant for one year and was only on the market for only 50 days;

(4) the Lascelle and Richardson Appraisals are also flawed because they made inadequate adjustments to the comparable sales for differences in square footage, no adjustment for balconies versus decks, pools, tennis courts and their location adjustments are unsupported; and

(6) the Brown Reports are the best evidence of market value and support the proportionality of the assessments and therefore the appeals for abatement 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 \$2,905,700 (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 Lascelle and Richardson Appraisals, each of which arrived at market value estimates for three residential condominium units to establish the disproportionality of the assessments of those three units and, with some modifications, the other 33 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 Lascelle and Richardson Appraisals and Brown Reports #1 and #2 concluded the “highest and best use¹” of the Properties 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 Nos. 4, 5 and 6, unnumbered.)

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.

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 36 units) would be an investor who would purchase the Properties for their income potential and would continue to lease the units as the Taxpayer has done for approximately 20 years.

The board's finding is supported by the testimony of Mr. Balagur, who indicated he attempted to sell a single Unit (A23), received no offers even though he offered owner financing. 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 down payments, higher credit scores, etc.). This finding is further supported by evidence submitted by the City indicating Edgewood Heights was not eligible for financing through the Federal Housing Administration ("FHA"). (See Municipality Exhibit N.)²

However, neither Mr. Hamilton nor Mr. Balagur indicated they 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

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. "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 Nos. 4, 5 and 6, p. 1.) "Does any single entity (the same individual, investor group, corporation, etc.) own more than 10% of the total units in the project? Yes. The owner of the subject property owns a total of 36 units in the complex." (Taxpayer Exhibit Nos. 1, 2 and 3, p. 1.) Based on the record, Edgewood Heights (which has a total of 120 units) would not satisfy either criterion.

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).

None of the appraisers completed an income capitalization approach to estimate the value of the Properties, although the Richardson Appraisal estimated a market rent for each of the three units he appraised, and based on a single sale, calculated a gross rent multiplier of 90 to arrive at an opinion of market value. 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 of the Properties (36 units owned by the same property owner for their income stream for over 20 years), Ms. Brown, as well as Mr. Richardson and Mr. Lascelle, 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, the highest and best use of the Properties.

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, 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

Theresa M. Walker, Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Robert C. Hamilton, 37 Atlantic Avenue, North Hampton, NH 03862, Taxpayer; and Danielle C. Pacik, Esq., Deputy City Solicitor, 41 Green Street, Concord, NH 03301.

Date: April 28, 2014

Anne M. Stelmach, Clerk