

Barton's Motel

v.

City of Laconia

Docket No.: 25957-10PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 2010 assessment of \$1,300,000 (land \$881,800; building \$418,200) on Map 304/Lot 220/4, 1330 Union Avenue, a seasonal motel with retail space and a manager apartment on 4.25 acres of land with 402 feet of water frontage and a dock (the "Property"). For the reasons stated below, the appeal for abatement is granted.

The 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, the Taxpayer must show the Property's assessment was higher than the general level of assessment in the municipality. Id. The board finds the Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) a March 19, 2012 independent appraisal prepared by Charles F. Schubert, Jr. of Applied Economic Research, Inc. (the "Schubert Appraisal," Taxpayer Exhibit No. 1) estimated the

market value of the Property was \$900,000 as of April 1, 2010, using the sales comparison approach and taking into account the cost of demolition, and this appraisal is the best evidence of its market value;

(2) Mr. Schubert concluded the Property's highest and best use is as vacant land available for commercial development and the City's appraiser agrees with this conclusion;

(3) Mr. Schubert's \$900,000 market value estimate is very close to the City's assessed land value (\$881,800); and

(4) the assessment should be abated to \$900,000 adjusted by the level of assessment in tax year 2010.

The City argued the assessment was proper because:

(1) the City performed a revaluation in 2010 using Vision Appraisal;

(2) the Schubert Appraisal does not take into account the subdivision potential of the Property which is larger in size and has substantially more road and water frontage than the comparables he uses;

(3) a February 20, 2013 appraisal prepared by David L. Cary, Jr. of Integra Realty Resources (the "Cary Appraisal," Municipality Exhibit B) estimated the market value of the Property was \$1,390,000 as of April 1, 2010, also using the sales comparison approach and taking into account the cost of demolition, and this appraisal is the best evidence of its market value; and

(4) the Taxpayer did not meet its burden of proving disproportionality.

The parties agreed the City's level of assessment in tax year 2010 was 98%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board¹ finds the Taxpayer met its burden of proving disproportionality. The appeal is granted and the assessment on the Property for tax year 2010 is therefore abated to \$1,152,000, rounded (based on a market value finding of \$1,175,000 times the 98% level of assessment) for the reasons discussed below.

To determine whether a tax abatement is warranted, the board considers and weighs 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, in making market value findings, the board must determine for itself issues of credibility and the weight to be given each piece of evidence 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). In arriving at a proportionate assessment, all relevant factors affecting market value must be considered. Paras v. City of Portsmouth, 115 N.H. at 67-68.

The Property was developed in the 1960's as a seasonal motel and consists of conventional rental rooms, one retail unit (rented to a bookstore) and one 3-bedroom apartment (occupied by the motel manager), with 402 feet of frontage on Paugus Bay, a dock and sandy

¹ Due to a medical issue, Member Theresa M. Walker did not participate in the deliberations and the deciding of this appeal. See RSA 71-B:6, I.

beach; according to the Taxpayer's appraiser, Mr. Schubert, the Property has good, western sunset views. The Property has 470 feet of road frontage on Union Avenue and a relatively high traffic count, averaging 13,000 cars per day. (See Schubert Appraisal, pp. 14 and 16.)

The parties, through their expert appraisers, further agree the highest and best use of the Property is as vacant, developable land, the existing buildings add no contributory value (at this point in their economic life) and the estimated cost of their demolition is approximately \$100,000. The key points of disagreement are whether the value of the Property, consisting of 4.25 acres, should be estimated on a 'per site' or 'per usable acre' basis, which are the best sale comparables and what adjustments to those comparables are most reasonable.

The board finds it is more appropriate to value the Property on a usable acre basis. Both appraisers inspected the Property. There was no evidence presented of any wetlands or "ledge" issues, making it reasonable to conclude the entire 4.25 acres are useable, as Mr. Cary, the City's appraiser, did. Mr. Cary concluded the Property, in its highest and best use, would be developed "for commercial retail use or multifamily dwellings" and "the most probable buyer is a developer." (See Cary Appraisal, p. 33.) Mr. Schubert did not disagree with this conclusion. (See Schubert Appraisal, pp. 35 and 37.)

Both appraisers acknowledged the limited lack of comparable sales and both included listings as well as sales in their appraisals. Mr. Cary presented only qualitative adjustments to the sales he used, which places some limit on how much reliance can be placed upon them. (See Cary Appraisal, pp. 41-43.)

Mr. Schubert, on the other hand, made explicit quantitative adjustments for each factor, but did not make any discernible adjustment for the subdivision potential of the Property. Like Mr. Cary, the board finds the Property does have subdivision potential because of several factors,

including the substantial amount of water and road frontage and the large variety of uses permitted by the present zoning. (See Cary Appraisal, p. 23.) Evaluating the likelihood of subdivision, the usable acre approach in the Cary Appraisal is a better starting point for estimating the market value of the Property.

The board does not, however, agree with Mr. Cary's estimate that the Property, if marketed to a developer in tax year 2010, would have had a value as high as \$350,000 per acre. Instead, the board finds, weighing the evidence as a whole and considering the development risks and uncertainties within that time frame, as well as the respective appraisals and testimony of both appraisers, that a more reasonable estimate of value is \$300,000 per acre. Applying 4.25 acres to this estimate and deducting the estimated \$100,000 demolition costs yields a market value estimate of \$1,175,000 for the Property. Adjusting for the 98% level of assessment, the board finds the assessment on the Property should be abated to \$1,152,000, rounded, for tax year 2010.

For these reasons, the appeal is granted.

If the taxes have been paid, the amount paid on the value in excess of \$1,152,000 for tax year 2010 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Since the Taxpayer has a pending tax year 2011 appeal before the board (Docket No. 26260-11PT), the 'subsequent year' statute (RSA 76:17-c, I) does not apply to this finding.

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

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax Consultants, 14 Roy Drive, Hudson, NH 03051, representative for the Taxpayer; and Chairman, Board of Assessors, 45 Beacon Street East, Laconia, NH 03246.

Date: 6/20/13

Anne M. Stelmach, Clerk