

Barton's Motel, Inc.

v.

City of Laconia

Docket Nos.: 26260-11PT/26859-12PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 2011 and 2012 assessments of \$1,152,000 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 on Paugus Bay (the "Property"). 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 Property's assessments were higher than the general level of assessment in the municipality. Id. The board finds the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessments were excessive because:

(1) an independent appraisal prepared by Charles F. Schubert, Jr. of Applied Economic Research, Inc. dated March 28, 2014 (the "Schubert Appraisal," Taxpayer Exhibit No. 1), using

the sales comparison approach and taking into account the cost of demolishing and disposing of the existing structures, estimates the market value of the Property was \$890,000 as of April 1, 2011 and April 1, 2012 and this appraisal is the best evidence of market value;

(2) the Schubert Appraisal (p. 38) concludes the highest and best use of the Property "as improved is as a redevelopment property with the removal of the existing buildings" (essentially the same highest and best use conclusion as in the City's appraisal);

(3) the City's appraiser used the same three sales comparables as Mr. Schubert and one listing and did not make an adjustment for the listing price even though listings are generally somewhat higher than actual sale prices (as shown in Taxpayer Exhibit No. 6, a statistical analysis of this difference); and

(4) the assessment should be abated to \$890,000 (the market value estimate in the Schubert Appraisal) adjusted by the levels of assessment in tax years 2011 and 2012.

The City argued the assessments were proper because:

(1) the Taxpayer appealed the prior year (tax year 2010) assessment and, in its June 20, 2103 Decision, the board found the assessment should be abated to \$1,152,000, rounded (based on a market value finding of \$1,175,000 adjusted by the 98% level of assessment) and, as a result of the Decision, the City abated the assessments for tax year 2011 and 2012 to \$1,152,000;

(2) a July 10, 2014 appraisal prepared by David L. Cary, Jr., MAI, MRICS, of Integra Realty Resources (the "Cary Appraisal," Municipality Exhibit A) estimates the market values of the Property were \$1,390,000 as of April 1, 2011 and April 1, 2012, 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;

(4) the Schubert Appraisal value conclusions are inconsistent and less credible than the Cary Appraisal because Mr. Schubert, unlike Mr. Cary, made different adjustments for waterfront, access and other attributes than Mr. Schubert did in his earlier appraisal (Municipality Exhibit B) using two of the same comparables and his negative adjustments are questionable and contradictory to each other; and

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

The parties agreed the City's levels of assessment in tax years 2011 and 2012 were 99.5% and 100%, respectively, the median ratios calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to meet its burden of proving disproportionality. The appeals for further abatement is therefore denied.

As noted above, the board heard and decided a tax year 2010 appeal involving the same property and the same parties. In its June 20, 2013 Decision (pp. 3-4), the board made the following findings with respect to the 2010 appeal and they are no less relevant to the 2011 and 2012 appeals:

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 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. [Citation omitted.]

Both appraisers (Mr. Schubert and Mr. Cary) agree the present use of the Property as a motel is an interim use and the highest and best use is for redevelopment, even though there are no "specific plans" for such development as of yet. (Cf. Schubert Appraisal, p. 44.). They also agree demolition and disposal costs estimated at \$100,000 would be incurred in converting the Property to its highest and best use.

While they used the same three sale comparables and a value per acre methodology, they made significantly different adjustments to each of these sales to arrive at their respective value conclusions. The board finds the adjustments in the Schubert Appraisal to be less reasonable and more questionable than those made in the Cary Appraisal. In particular, the board is not persuaded the significant negative adjustments made by Mr. Schubert to his three comparables (-35%, -35% and -40% for "lake frontage" and -45%, -55% and -80% overall) are supported by the evidence presented. These relatively high negative adjustments led him to calculate a value of \$232,892 per acre for the Property. The Property has less waterfront per acre because the three sale comparables are smaller in size (3.19 acres, 1.1 acres and 0.48 acres compared to 4.25 acres). The board finds Mr. Schubert's analysis overcompensates for this difference, leading to a lower market value indication.

The lesser adjustments for waterfront differences applied by Mr. Cary are more reasonable. Along with the same three sale comparables, he also considered one listing to estimate a \$350,000 value per acre and a value conclusion of \$1,390,000. This is the same market value estimate he arrived at in his earlier appraisal prepared with respect to the 2010 tax year (see Taxpayer Exhibit No. 2).¹ In his appraisal (p. 42), Mr. Cary also presented a "Market Participant Survey" indicating a "Value Opinion" range of \$1,000,000 to \$1,500,000 which he presented as a test of reasonableness.

The City abated the assessments to \$1,152,000 in tax years 2011 and 2012. Since the level of assessment in each tax year is close to or equal to 100%, the equalized values of these assessments is roughly \$1,150,000 at the lower end of this value range.

Deducting the agreed upon estimate of \$100,000 in demolition and disposal costs yields a per acre value (for 4.25 usable acres) of approximately \$247,000. This value is well below the \$350,000 per acre value estimated in the Cary Appraisal (pp. 41-42), but is within 6% of the \$233,000 (rounded) per acre value estimate in the Schubert Appraisal (p. 56.)

There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

Considering the evidence presented as a whole, the board finds the Taxpayer did not meet its burden of proving the market value of the Property in tax year 2011 and 2012 was lower than

¹ One difference is that Mr. Cary applied "quantitative" adjustments for various factors rather than merely making "qualitative" adjustments as he did in the earlier appraisal. This change had no effect on his value conclusion because he employed essentially the same thought process in estimating the value of the Property for all three tax years.

the equalized value of the assessments. Since no disproportionality has been demonstrated, the appeals are 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

Albert F. Shamash, 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; Chairman, Board of Assessors, City of Laconia, 45 Beacon Street East, Laconia, NH 03246; and Vision Government Solutions, Attn: Mike Tarello, 44 Barefoot Road, 2nd Floor, Northborough, MA 01532, Contracted Assessing Firm.

Date: August 28, 2014

Anne M. Stelmach, Clerk