

LJJ Realty LLC

v.

City of Concord

Docket No.: 27202-14LC

ORDER AND AMENDED DECISION

The “City” filed an April 2, 2015 Motion for Reconsideration (“Motion”) of the board’s March 6, 2015 “Decision.” The “Taxpayer” filed an “Objection” to the Motion on April 7, 2015. The suspension order issued by the board on April 6, 2015 is hereby dissolved and the Motion is denied.

The Motion raises substantially four arguments ruled on in the Decision: 1) the board overlooked the fact the City made 10% adjustments to the comparable sales to account for the power lines in the Brown Appraisal; 2) the board did not make an adjustment for the current use penalty paid by the buyer of Lot 34 Appleton Street; 3) no adjustment should be made for the proximity of the church on the abutting property; and 4) it was not appropriate for the board “to reduce the amount of the LUCT based on a determination that only 80% of the Property was being disqualified from current use.” The board will address these arguments below.

As stated in its Decision (at pp. 3-4), the board not only reviewed all of the evidence presented but also took a view of the Property and the comparable sales utilized in both the

Smith and Brown Reports. The board concurred with the description of the Property in the Smith Report at p. 3 which discussed numerous factors that adversely impacted the market value of the Property (see p. 4 of Decision).

With respect to the City's first argument, the board reviewed the Decision and notes an inadvertent error on page 5. On line 6, the word "any" should have read "adequate" and the board hereby amends its Decision to reflect this error.

Next, the City states in arguments 2 and 3 the board erred by not adjusting for the current use penalty paid by the buyer of Lot 34 Appleton Street and no adjustment should be made for the proximity of the church. The board does not agree. As stated in the Decision, the board found several factors were adverse to the marketability of the Property (Id. pp. 4-5) and made appropriate adjustments to the two sales it determined were most comparable. As stated, the findings were based on the evidence, the board's view of the Property and the comparables and its judgment and experience. In making its findings where there is conflicting evidence, the board must determine for itself the credibility and weight to be given the 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).

Last, the City did not present a copy of the current use map depicting where the 0.51 acre disqualified from current use was located on the 1.73 acres purchased by Andrew Knight. The board clearly stated in its Decision at pp. 5-6 the reasoning for making an adjustment to its estimate of value of the 1.73 acres purchased by Mr. Knight and need not reiterate its findings in

this Order. As an aside, the board does note, however, the City assessed the LUCT to the seller of the 0.51 acre, not to the buyer of the 1.73 acres (Andrew Knight).

In summary, with the exception of the inadvertent error on page 5, the board finds the City did not demonstrate the board erred in its Decision and, thus, the Motion failed to show any “good reason” to grant a rehearing. See RSA 541:3.

Any appeal of the Decision must be by petition to the supreme court filed within thirty (30) days of the Clerk’s date shown below. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Jeffrey Knight and Steve Tamposi, 20 Trafalgar Square - Suite 602, Nashua, NH 03063, representatives for the Taxpayer; Chairman, Board of Assessors, City of Concord, 41 Green Street, Concord, NH 03301 and Current Use Board, c/o Department of Revenue Administration, 109 Pleasant Street, Concord, New Hampshire 03301, Interested Party.

Date: April 27, 2015

Anne M. Stelmach, Clerk