

Hodges Development Corporation

v.

City of Concord

Docket Nos. 5169-88 and 6672-89

DECISION

These appeals were consolidated for hearing.

The Taxpayer appeals, pursuant to RSA 76:16-a, the City's 1988 and 1989 assessments as follows:

	<u>1988</u>	<u>1989</u>
203-207 Loudon Rd. Map 114A, Block 1, Lot 14	\$3,332,970	\$3,332,970

The 203-207 Loudon Road property consists of a 10-building apartment complex with 226 rental units known as Salisbury Green. The Taxpayer owns, but did not appeal, several other properties.

The parties agreed the equalization ratios for the City of Concord for the 1988 and 1989 tax years were 29 and 30 percent, respectively.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved it was disproportionally taxed.

Issue of the Taxpayer's Burden

Before reaching the valuation issue, the board must address an issue raised by the City both at the hearing as a motion to dismiss and in its post-hearing memorandum as a reason to deny the appeal. The City asserts the Taxpayer failed to carry its burden of proof because the Taxpayer did not present any evidence on the assessments of the Taxpayer's properties not appealed to the board. The City argued, citing Appeal of Town of Sunapee, 126 N.H. 215, 217 (1985), the Taxpayer's burden was two-fold:

- (1) the Taxpayer must show the appealed property was overassessed; and
- (2) the Taxpayer must show the Taxpayer's other properties were properly assessed (i.e., not underassessed).

The City claims the Taxpayer presented evidence on the first requirement but not on the second requirement. The board finds the City's position fails as a matter of law and evidence.

As will be discussed in the next section, the Taxpayer made a sufficient showing that the appealed property was overassessed. The Taxpayer also introduced the property-record cards on the nonappealed properties, asserting those assessments were proportional. While the burden of proving disproportionality remained with the Taxpayer throughout this appeal, once the Taxpayer had made its presentation the burden of persuasion shifted to the City to show:

- (1) the appealed property was proportionally assessed; or
- (2) the nonappealed properties were underassessed.

The City did neither, but simply moved to dismiss for the reasons stated above. Moreover, in response to a board question, the City stated the other

properties were properly assessed. Once this agreement was made the very underpinning of the City's legal argument is removed, and the board need only review the appealed property. Nonetheless, the board has decided to enunciate the legal flaw in the City's argument. We find the Taxpayer proved the appealed property was disproportionally assessed, and we find the Taxpayer's other properties were not underassessed.

In determining the proper and proportional tax burden of any taxpayer, the board must "consider" all of the taxpayer's property in the municipality whether each property was appealed or not. Id.; see also Bemis Bro. Bag Co. v. Claremont, 98 N.H. 446, 451 (1954); Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200 (1899). The court has not defined the meaning of "consider" or which party has the burden of proof or the burden of persuasion with respect to the assessments on nonappealed properties. Clearly, the taxpayer has the burden to prove disproportionality of the assessment on the appealed property. Appeal of Town of Sunapee, 126 N.H. at 217. But does the taxpayer also have the burden to prove the taxpayer's other, nonappealed properties, were properly assessed? We think not. It is sufficient for the taxpayer to introduce the property-record cards on the other properties and to testify that the taxpayer thinks these assessments are correct. See Appeal of Town of Bow, Newington & Seabrook, 133 N.H. 194, 199 (1990). (Burden carried by showing overassessment within town only, not required to prove other towns were properly assessed.) The law assumes the City has done its job and the assessments are proportional. This is why the Taxpayer has the burden to show otherwise. Thus, the Taxpayer cannot be required to prove what the law assumes. As a practical matter, placing the burden of proof on the Taxpayer

that the other assessments are correct would require additional work and expense on the Taxpayer's part and additional time on the board's part. In some cases, a taxpayer owns several properties, and it would be a misuse of the board's time to spend a significant amount of time reviewing the nonappealed properties.

Our decision above is consistent with the law and practicality. To avoid a denial or dismissal, a taxpayer must show the appealed property was disproportionally assessed. The board must then "consider" the assessments on the taxpayer's other properties to determine if those properties were underassessed. The Taxpayer submitted the property-record cards and testified the assessments on the other properties were correct. The City never refuted these points and conceded the other properties were correctly assessed. The board then considered the other properties by reviewing the property-record cards and the Taxpayer's unrefuted evidence that these assessments were proportional. Therefore, the City's motion is denied, and we find the Taxpayer carried its burden.

The Property's Assessment

The Taxpayer challenged the City's assessment on several grounds. The Taxpayer questioned the City's methodology in revising upwards the 1988 and 1989 assessments from the 1987 assessment when a) the property had not changed drastically from 1987 and 1988, and b) the City had not undergone a city-wide reassessment. On this point, the Taxpayer argued it was impossible to determine the specific reasons and adjustments made by the City to the 1988 and 1989 assessments because of the lack of any documentation by the City of the data that formed the basis for the adjustments from the previous year's

assessments. The Taxpayer also argued the City used the incorrect section of the Marshall and Swift replacement cost manual and in so doing overstated the base square-foot rates by 55 percent.

As to the proper valuation, the Board finds the evidence submitted by the Taxpayer's expert witness, John M. Crafts, is credible, reasonable and un rebutted. The Taxpayer also raised legitimate and un rebutted concerns about incorrect cost schedules being used by the City in their assessments. The only defense of the City's assessments was found in the deposition of David MacArthur. However, his explanations were too general and vague to be given much weight.

The Board rules it is reasonable that distinct valuations for the two years under appeal be found for 241 Loudon Road. The statutes (RSA 75:8) and case law (Appeal of Net Realty Holding Trust, 128 N.H. 797) make provisions for municipalities to review and revise or correct assessments annually. Further, it is clear from the deposition of David MacArthur (Exhibit TP-9) that it was the practice of the City to make such periodic reviews and adjustments. And lastly, it is reasonable to have distinct values, given the state of flux the general market, and specifically the apartment-housing market, was in during 1988 and 1989.

Therefore, the Board rules the Taxpayer has met its burden and finds the proper assessments for 203-207 Loudon Road to be \$2,665,436 and \$2,151,126 for the 1988 and 1989 tax years, respectively.

If the taxes have been paid, the amount paid on the value in excess of

	<u>1988</u>	<u>1989</u>
203-207 Loudon Rd.	\$2,665,436	\$2,151,126

is to be refunded with interest at six percent per annum from date of payment to date of refund.

The Board rules on the City's request for findings of fact and rulings of law as follows:

- 1) Granted.
- 2) Granted.
- 3) Granted.
- 4) Neither granted nor denied.
- 5) Neither granted nor denied.
- 6) Granted.
- 7) Neither granted nor denied.
- 8) Granted.
- 9) Granted.
- 10) Denied.
- 11) Denied.
- 12) Denied.

SO ORDERED.

June 19, 1991

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin

Ignatius MacLellan

I certify that copies of the within decision have been mailed this date, postage prepaid, to Peter D. Wenger, Esq., Counsel for the Taxpayer, and to the Chairman, Board of Assessors, City of Concord.

June 19, 1991

Melanie J. Ekstrom, Deputy Clerk

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