

Vito A. and Mary C. Caprio

v.

City of Nashua

Docket No.: 6279-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1989 assessments of \$147,300 (building only) on a condominium at 3 Hawthorne Village Road - Unit #345, a C-1 style unit and of \$149,000 (building only) on a condominium at 5 Hawthorne Village Road - Unit #346, a C-5 style unit (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers failed to carry this burden.

The Taxpayers argued the assessments were excessive because:

- (1) both units were purchased for \$337,500 each on March 15, 1988 and the developer gave them a special deal because they bought two units;
- (2) Unit #346 (C-6 unit) was sold on April 24, 1990 for \$315,000 and Unit #345 (C-1 unit) was sold on May 2, 1990 for \$200,000 with an exchange of \$53,000 toward a unit in Apple Green;

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(3) the City is using 1988 values and has not adjusted for the change in the market which decreased by approximately 18 percent;

(4) Unit #346 (C-6 unit) was a hard sell because of its floating dining room which style was discontinued in 1988;

(5) the estimate of value of unit #345 (C-1) as of April 1, 1989 is \$280,000; and

(6) the estimate of value of unit #346 (C-6) as of April 1, 1989 is \$290,000.

The City argued the assessments were proper because:

(1) the acquisition prices of the units do not accurately reflect the market when they were acquired;

(2) the trade of the properties flavored the sales price;

(3) comparable sales support the fair market values of the units; and

(4) the assessments are proportionate.

Board's Findings & Rulings

The board is faced with the question of what is the proper ratio or indication of the general level of assessment within the City, which then can be applied to a finding of current market value to produce a proportionate assessment. In this case, the City did not stipulate to the validity of the Department of Revenue Administration's (DRA) ratio nor did it use the ratio in assessing the Taxpayers. The Taxpayers relied upon the (DRA) equalized ratio of 43 percent for tax year 1989 to equalize the estimate of market value, but

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did not submit any statistical evidence supporting DRA's ratio nor did the Taxpayers submit their own proportionality study.

Discussion

The basis for taxation is given the legislature in NH Constitution pt I, art. 12 and pt II, art. 5 (each member of the community is bound to contribute his reasonable and proportionate share toward the protection of the community). The legislature in RSA 75:1 states that property shall be appraised at its market value and in RSA 75:8 directs the assessors to annually examine and reappraise property that has changed in value. However, the statutes do not specifically address the proportionality issue especially if the assessments are at a level other than full market value. The Courts in a long series of cases have addressed this proportionality issue.

Bemis & C Bag Co. v. Claremont, 98 NH 446 (1954);

Berthiaume v. City of Nashua, 118 NH 646 (1978);

Milford Props., Inc. v. Town of Milford, 119 NH 165 (1979);

Stevens v. City of Lebanon, 122 NH 29 (1982);

Public Service Co. of NH v. Town of Seabrook, 133 NH 365 (1990);

Appeal of Andrews, ____ NH ____ (July 30, 1992).

In short, these cases state: (1) there should be only one general level of assessment per town, i.e., two or more ratios or levels of assessment by classes of property is impermissible; (2) trial courts must consider DRA's

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equalization ratio in the issue of disproportionality, but by itself is not sufficient to carry the Taxpayers' burden of proof; and (3) if the municipality has neither stipulated to the ratio nor used it in arriving at the assessment, then the taxpayer must submit statistical evidence in support of the DRA's ratio or separate proportionality study. The board understands and agrees with the court's interpretation of the Constitution and Statutes. As a quasi-judicial, administrative body, the board must also be concerned with the practical and equitable application of the law. The City, in fulfilling its responsibilities to equitably assess property under RSA 75, must be aware of and consider, while not necessarily use, the general level of assessment within the City. The general level of assessment is just as important an element for determining an equitable assessment as is the proper physical description of a property and relevant market data. In fact, equitable assessing can be viewed as a three legged stool, the three legs being: accurate physical description of the property, relevant market data and the general level of assessment. If any one leg is lacking, equitable assessment has not been achieved by the City. The City cannot annually review and correct assessments without a general knowledge of the length of the proportionality leg to that stool. "Once a town has generally assessed real estate taxes at a specific percentage of fair market assessment, the town must use some method to equalize tax assessments to insure proportionality."

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Appeal of Andrews, ____ NH ____, slip op. at 2. The board finds that the DRA's samples, while perhaps not identically representative of the property mix within Nashua, are reasonably representative and thus indicate the general level of assessment within the City. Therefore, the board concludes that the best evidence before it as to the general level of assessment in the City is the DRA ratio of 43 percent for tax year 1989.

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Conclusion

We find the Taxpayers failed to prove the Property's assessments were disproportional for the following reasons:

(1) The Taxpayers evidence of the purchase of the two units by their own admission was "a deal" because they purchased two units at the same time.

Further, the sale of the units was negotiated through a "trade" for another unit.

(2) The Taxpayers argued the assessments should be reduced because the market for the Property has been declining. Evidence of a declining market alone is not a basis for reducing an assessment no more than evidence of an appreciating market is a valid basis of increasing an assessment. The issue is proportionality. The Taxpayers need to make a showing that the Property has changed in value to a greater extent than that indicated by the change in the general level of assessment in the City as a whole to prove their Property is disproportionately assessed.

The board finds as follows on the City's requests for findings and rulings:

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Vito A. and Mary C. Caprio, Taxpayers; and Chairman, Board of Assessors of Nashua.

Dated: March 22, 1993

Valerie B. Lanigan, Clerk

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