

Charles A. and Patricia Bernhardt

v.

City of Nashua

Docket No.: 6695-89

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1989 assessment of \$156,300 (building only) on a condominium at 22 Cherry Hollow Road - Unit #49, a C-5 style unit (the Property). The Taxpayers failed to appear, but consistent with our Rule, TAX 102.03(g), the Taxpayers were not defaulted. This decision is based on the evidence presented to the board. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was 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).

The Taxpayers argued in their written submissions that the assessment was excessive because:

- (1) the Property was purchased in April, 1987 for \$269,900 and since the purchase a finished downstairs room has been added at a cost of \$4,000;
- (2) the C-5 units are sold in three different configurations at three different prices yet the City has assessed all at the most expensive

configuration level;

(3) the subject is a partial upgrade unit and has 3,080 square feet consisting of 3 bedrooms, 3 baths, 1 finished room and a 16 foot x 18 foot lower level (288 square feet);

(4) the Property had water damage due to a defective roof and the City did give an abatement for 1990 for the water damage; and

(5) a comparative market analysis prepared by Joanne M. Graves of Century 21, RA Group estimated the Property should be marketed in a range of \$300,000 to \$315,000 as of March 7, 1990.

The City argued the assessment was proper because:

(1) the City's appraisal report (City Exhibit A) arrived at a fair market value as of April 1, 1989 of \$369,000 and outlines in detail the City's arguments which need not be reiterated here; and

(2) of the five comparable sales utilized in the report, comparable number 3 was given the most weight which sold for \$369,000 on October 25, 1988.

#### **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 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,

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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 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

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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." Appeal of Andrews, \_\_\_ NH \_\_\_, slip op. at 2. The board finds that the DRA's samples, while perhaps not identically representative of the property

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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.

#### **Conclusion**

Based on the evidence, we find the correct assessment should be \$148,485. This assessment is ordered because the board finds the Property suffers from water damage due to a defective roof and the market would indicate a 5 percent differential for such damages. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b).

The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the City. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18. The Taxpayers introduced a letter of opinion from Joanne M. Graves, Century 32, RA Group, which indicated that the Property should be marketed in the range of \$300,000 to \$315,000 as

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of March 7, 1990. The date of assessment is April 1, 1989. No evidence of sales was submitted to support the estimate of value as of April 1, 1989.

If the taxes have been paid, the amount paid on the value in excess of \$148,485 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.
6. Denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Charles A. and Patricia Bernhardt, Taxpayers; and Chairman, Board of Assessors of Nashua.

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Dated: March 22, 1993

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Valerie B. Lanigan, Clerk