

Kenneth L. and Diane E. Kanady

v.

City of Nashua

Docket No.: 6696-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1989 assessment of \$156,300 (building only) on a condominium at 32 Cherry Hollow Road - Unit #54, a C-5 style unit (the Property). 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). We find the Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the Property was purchased for \$270,900 in December, 1986 at a pre-construction price and the purchase and sales agreement was executed in February, 1986;

Kenneth L. and Diane E. Kanady

v.

City of Nashua

Docket No.: 6696-89

Page 2

- (2) the unit had substantial physical defective workmanship requiring the replacement of the roof last year;
- (3) there are three variations of C-5 units - the subject has only 2,400 square feet, has no finished basement and no walk-out, no family room or bath, no bedroom downstairs, and no panoramic views where other C-5 units have some or all of these amenities;
- (4) the subject does not have two-zone heating and has different quality carpeting;
- (5) the development amenities described at the time of purchase were not completed on April 1, 1989; and
- (6) based on a market study, the estimated fair market value as of April 1, 1989 is \$299,000.

The City argued:

- (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;
- (2) the City stipulated that the basement is not finished and an adjustment of \$42,000 from the fair market value estimate is warranted; and
- (3) the City further stipulated that the market would show a 2 percent differential for damage caused from water through the ceilings and walls.

Kenneth L. and Diane E. Kanady

v.

City of Nashua

Docket No.: 6696-89

Page 3

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, 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.

Kenneth L. and Diane E. Kanady

v.

City of Nashua

Docket No.: 6696-89

Page 4

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 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

Kenneth L. and Diane E. Kanady

v.

City of Nashua

Docket No.: 6696-89

Page 5

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 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 \$133,580. This assessment is ordered because the board finds that although the City recommended adjusting for the unfinished basement and water damage, the board finds that the market would indicate a 5 percent differential for damage to the walls and ceilings caused by the structurally defective roof.

Kenneth L. and Diane E. Kanady

v.

City of Nashua

Docket No.: 6696-89

Page 6

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).

Although the Taxpayers argued for an additional 25 percent differential or a fair market value of \$245,000, the board finds that the information supplied does not support that figure.

If the taxes have been paid, the amount paid on the value in excess of \$133,580 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

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this

Kenneth L. and Diane E. Kanady

v.

City of Nashua

Docket No.: 6696-89

Page 7

date, postage prepaid, to Kenneth L. and Diane E. Kanady, Taxpayers; and
Chairman, Board of Assessors of Nashua.

Dated: March 22, 1993

Valerie B. Lanigan, Clerk

0008