

William Dube and Richard Cabral

v.

City of Nashua

Docket No.: 6844-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1989 assessment of \$102,600 (building only) on a condominium at 10 Mt. Laurel - Unit #503 (the Property). For the reasons stated below, the appeal for abatement is denied.

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 failed to carry this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Property was purchased in January, 1988 for \$229,200;
- (2) several units have since been foreclosed on which has had an affect on the value of the owner occupied units;

- (3) the developer and lender implemented price reductions as a means of stimulating sales;
- (4) Donovan Appraisal Services estimated the market value of the Property as of March 28, 1990 to be \$188,000;
- (5) the equalized assessment indicates a value of \$238,605;
- (6) the 1983 revaluation notice indicates a revised value of \$128,400; and
- (7) sales information and documentation clearly indicates a downward trend in value and the revaluation clearly indicates where the market was headed.

The City argued the assessment was proper because:

- (1) the subject Property sold in January, 1988 for \$229,200;
- (2) the 1989 fair market value was based on five comparable sales of identical units of which comparable number 1 which sold on April 12, 1988 for \$247,900 is the most indicative of value;
- (3) a location adjustment of \$49,400 was added to units with a southeasterly view which commanded a premium value because of their view of the City of Boston;
- (4) the estimated value of the Property as of April 1, 1989 is \$263,300; and
- (5) the City's appraisal report (City Exhibit A) outlines in further detail the City's arguments which need not be reiterated in this decision.

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 taxpayers 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.

Conclusion

We find the Taxpayers failed to prove the Property's assessment was disproportional for the following reasons:

(1) Although the board was not convinced by the City's "matched pair technique" utilized in arriving at a premium value for properties with a southeasterly view, a review of the comparable sales indicated proportionality.

(2) The sale of the subject Property in January, 1988 for \$229,200 although not conclusive, is cogent evidence of market value assuming necessary adjustments are made for time and other factors. The Taxpayers did not dispute that the purchase was an arms's length transaction. Under New Hampshire law, an arm's length purchase price is highly probative evidence of a property's value. See Appeal of Lakeshore Estates, 130 N.H. 504, 508; Howard H. Poorvu v. City of Nashua, 118 N.H. 632, 633.

(3) The Donovan appraisal gave no indication of market value as of

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April 1, 1989 but was evidence that the market was on the decline. 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.

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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. Granted.

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 William Dube and Richard Cabral, Taxpayers; and Chairman, Board of Assessors of Nashua.

Dated: March 29, 1993

Valerie B. Lanigan, Clerk