

John A. and Fern D. Culver

v.

City of Portsmouth

Docket No.: 8163-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1990 assessment of \$96,200 (land \$16,800; buildings \$79,400) on a condominium unit in the Tidewatch Condominiums (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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to prove the Property was disproportionately assessed.

The Taxpayers argued the assessment was excessive because:

- (1) a July, 1990 appraisal estimated the fair market value to be \$150,000;
- (2) the Property, a B unit, was purchased for \$150,000 in August, 1990;
- (3) comparable sales support overassessment;
- (4) the assessment of \$1,800 on the bookcase and \$8,600 for the loft is excessive;

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(5) the unit has the hot water heater on the third floor, has electrical problems, a crawl space, no full basement, and is in an incomplete complex with street lights not in accordance with city code;

(6) taxes are paid for services not rendered by the City; and

(7) a proper assessment should be \$63,100.

The City argued the assessment was proper because:

(1) the three sales within Tidewatch were among nine duress sales sold by the developer (during a four-month period) trying to raise cash to ward off foreclosure; all of the proceeds from the nine sales went directly to the bank;

(2) two arms length transactions which took place in August and September, 1990 support the assessment;

(3) the adjustments for options (loft/bookcase) come directly from the developer's price list; and

(4) the assessment is fair and proportional.

Board's Rulings

Based on the evidence, we find the Taxpayers failed to prove the Property's assessment was disproportional for the following reasons:

1) The July, 1990 Stanhope appraisal indicated a sales price of \$150,000 for the subject (which was the agreed upon purchase price) before comparing the subject to the comparable sales utilized.

2) The Stanhope appraisal used questionable sales without any indication as to whether they were verified to be arms-length transactions.

3) The Stanhope appraisal did not enumerate as to how adjustments to the

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comparables were applied and the indicated range of values exceeded the fair market value found for the subject.

- 4) The Taxpayers testified the Property's purchase price was \$150,000 in August, 1990. While this is some evidence of the Property's market value, it is not conclusive evidence. See Appeal of the Town of Peterborough, 120 N.H. 325, 329 (1980). The Taxpayers acknowledged they paid the asking price without any attempts at a counter offer and the City's evidence of the developer's financial difficulties and the sales which occurred during a four month period support the City's position that they were duress sales. The sales made by an owner to satisfy delinquent loans are not "arms-length" due to the pressure of the owner to sell; consequently, while these accelerated sales will affect the market value of those who choose not to sell, they alone do not define the market.
- 5) The two arms-length transactions which occurred in August and September, 1990 support the assessment.

The Taxpayers stated they pay taxes for services not received by the City. Lack of municipal services is not necessarily evidence of disproportionality. As the basis of assessing property is market value, as defined in RSA 75:1, any effect on value due to lack of municipal services is reflected in the selling price of comparables and consequently in the resulting assessment. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

The City testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the City. This testimony is evidence of proportionality. See Bedford Development Company v. Town of Bedford,

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122 N.H. 187, 189-90 (1982).

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A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

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 John A. and Fern D. Culver, Taxpayers; and Chairman, Board of Assessors, City of Portsmouth.

Dated: May 2, 1994
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Valerie B. Lanigan, Clerk