

Gil Ornelas  
Docket No.: 8322-90PT

Norman and Jeannette Quimby  
Docket No.: 8351-90PT

James Arcari  
Docket No.: 9537-90PT

and

John B. and Despina Clark  
Docket No.: 9676-90PT

v.

City of Dover

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1990 assessments of \$45,000 each (land \$2,100; buildings \$42,900) on condominium units #42, #47, #40 and #44 in The Paddock Condominiums (the Properties). For the reasons stated below, the appeals for abatements are 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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to prove disproportionality.

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The Taxpayers generally argued the assessments were excessive because:

- (1) the Clark property was purchased for \$89,900 in February, 1990, has a garage but does not have air conditioning or a finished basement;
- (2) the land has been overassessed and the assessments are inconsistent compared to comparable single family homes which hold land in private and the condominiums in which the land is held in common;
- (3) the City has backed into the assessments based on sales prices; and
- (4) the condominium association owns and maintains the streets and garbage pick-up is not provided by the City.

The City argued the assessments were proper because:

- (1) a sales analysis was made of all units which sold in the Paddock from April, 1988 to December, 1990;
- (2) similar type, style and category indicated a market value of \$99,800 per unit;
- (3) the City reviewed the sales of similar units and time adjusted to April, 1990 indicating the assessments were fair and proportionate; and
- (4) a garage was purchased by the Clarks in August, 1990 which was after the assessment date.

#### Board's Rulings

As requested by the parties, the board has taken official notice of the Graves v. Dover (Docket No.: 6727-89 et al) decision. Based on the evidence, the board finds the Taxpayers failed to prove the Properties' assessments were disproportional.

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The Taxpayers argued the assessments should be lowered because they owned and maintained the streets and the City did not have garbage pick-up. 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 Taxpayers argued the land had been overassessed because it was held in common and not privately owned. Answering the Taxpayers' assertion requires explaining the "amenity" assessment. The "amenity" assessment is calculated by determining the replacement cost of the unit and subtracting the cost from sales prices. The remaining value is called the "amenity" value. This "amenity" value captures all tangible and intangible features of the unit and of the complex, including locus or situs desirability and marketability, common land, improvements such as roads, landscaping, lighting, parking, utilities, site work and if present, recreational facilities.

The City submitted a sales analysis of properties sold in the Paddock from 1988 through 1990 which indicated a value per unit of \$99,800. No challenge was made to the department of revenue administration's equalization ratio of 46% for the 1990 tax year for the City of Dover. The Properties' equalized value is \$97,850 per unit. The board finds the City supported the Properties' assessments.

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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 in 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

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Paul B. Franklin, Member

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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 Gil Ornelas, Norman and Jeannette Quimby, James Arcari and John B. and Despina Clark, Taxpayers; and Chairman, Board of Assessors, City of Dover.

Dated: June 30, 1994

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Valerie B. Lanigan, Clerk