

Robert J. & Nancy M. Freeman

v.

City of Portsmouth

Docket No.: 9666-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1990 assessment of \$114,900 (land, \$16,800; buildings, \$98,100) on their real estate, consisting of condominium unit #71 at a development known as Tidewatch (the Property). The Taxpayers and the City waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. 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) sales of units of Tidewatch have declined in price from 1989 to 1990;
- (2) the taxpayers purchased the unit in April of 1990 for \$185,000 at auction

resulting from the bankruptcy of the former owner; and

(3) analysis of sales occurring in 1990 indicate the assessment is 15 to 20 percent excessive.

The City argued the assessment was proper because:

(1) time trending the original purchase of unit #71 in July of 1987 to April of 1990 indicates an assessed value of \$119,100;

(2) the eight sales relied upon by the taxpayer in 1990 took place as the result of the developer having to liquidate some inventory in an attempt to satisfy the mortgagee; and

(3) no other units had sold for as low as these eight units, nor have any units been listed for sale since at this lower price range.

Based on the evidence, we find the correct assessment should be \$100,000. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the City of Portsmouth shall make this allocation in accordance with its assessing practices.) This assessment is ordered because:

(1) the arms length sales that occurred in 1990 indicate a declining market value;

(2) auction, foreclosure and otherwise distressed sales occur under duress and they do not meet the criteria of an arms length transaction;

(3) such distressed sales alone are not conclusive evidence of market value

but do provide a background against which the arms length sales must be viewed;

- (4) arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975);
- (5) in weighing all the evidence presented, the board finds the Taxpayers' Property had a market value of \$200,000 as of April, 1990; and
- (6) applying the City's 1990 equalization ratio of 50% indicates a proper assessment of \$100,000.

If the taxes have been paid, the amount paid on the value in excess of \$100,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

George Twigg, III, Chairman

---

Paul B. Franklin, Member

Robert J. & Nancy M. Freeman v. City of Portsmouth  
Docket No.: 9666-90  
Page 4

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert and Nancy Freeman, taxpayers; and the Chairman, Board of Assessors of Portsmouth.

Dated: April 24, 1992

---

Melanie J. Ekstrom, Deputy Clerk