

Edward G. Patenaude

v.

City of Portsmouth

Docket No.: 11146-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1991 assessment of \$110,000 (land \$16,800; buildings \$93,200) on a condominium unit in the Tidewater Condominiums (the Property). The Taxpayer 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 denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer failed to carry this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the assessment, when equalized by the City's 55% equalization ratio, would result in a \$200,000 market value, which is unrealistic;

- (2) the Property was appraised in December, 1990 for \$173,000;
- (3) a unit was recently listed for sale for \$165,000, and three others sold for between \$140,000 and \$150,000;
- (4) the condominium project is still incomplete, and only 55 units pay the condo fees that were initially to be divided by 122 units;
- (5) the backlands were foreclosed on by the bank and the unit owners may incur the backlands' cleanup costs should they remain undeveloped;
- (6) the developer never filed bankruptcy, and therefore, there were no "distress sales," and the auction sales were subsequently listed with and sold through a real estate agent for market prices; and
- (7) condominium owners bear a greater tax burden than single-family home owners.

The City argued the assessment was proper because:

- (1) the Property's assessment, when equalized by the correct 56% equalization ratio, had a \$196,400 value;
- (2) the assessment does not include the Property's third bedroom and screened porch;
- (3) a comparable unit sold in September, 1990 for \$195,000 and, when the sale price is adjusted for time and extra differences, indicates the Property is underassessed;
- (4) the Taxpayer's sales were foreclosure auctions and should not be relied upon;
and
- (5) the Taxpayer's appraisal is flawed because two of the comparable sales were distress sales, one comparable was inferior in quality and size, and the adjustments were not supported by fact.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed for the following reasons.

(1) The Taxpayer's appraiser utilized three comparable sales in arriving at a fair market value of \$173,000 as of December 10, 1990. The board was unable to rely on the appraiser's report because:

- (a) the sales made by an owner to satisfy delinquent loans or by a developer raising cash to hold off foreclosure are not arm's 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;
- (b) comparable #2, which sold in August, 1990 for \$170,000, was a type C unit (the subject is type A). An identical type C unit sold one day before comparable #2 for \$200,000, yet the appraiser did not include that sale in his report; and
- (c) the appraisal was not time adjusted to the date of assessment, April 1, 1991.

(2) The Taxpayer stated that units were selling for between \$140,000 and \$150,000; however, the Town's evidence suggests that six additional units sold between March, 1990 and January, 1991 in a range of \$167,500 to \$195,000.

(3) The sale of unit 50 for \$180,000 in January, 1992, if trended by the department of revenue administration's equalization ratio change from 59% for 1991 to 56% for 1992 ($59 \div 56 \times \$180,000 = \$189,642$), is evidence of proportionality.

(4) 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).

Motions for reconsideration of this decision must be filed within thirty (30) 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

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Edward G. Patenaude, Taxpayer; and Chairman, Board of Assessors, City of Portsmouth.

Dated: 1/24/94

Lynn M. Wheeler, Deputy Clerk