

Otto and Joyce Cardinale

v.

City of Portsmouth

Docket No.: 11311-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1991 assessment of \$114,200 (land \$16,800; buildings \$97,400) on a condominium unit in the Tidewatch Condominiums (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 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 carry their burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the City overassessed the third bedroom by basing its value on the developer's construction price instead of what the Taxpayers actually paid to

construct the room;

- (2) of all the units sold in the condominium complex between 1987 and 1989, the Property had the highest assessment to sales-price ratio (52%);
- (3) an appraiser estimated a \$179,000 value in March, 1992; and
- (4) the assessment should be \$108,535.

The City argued the assessment was proper because:

- (1) the value of the third bedroom is not determined solely on the basis of its construction cost because the room has a contributory value to the entire unit;
- (2) pairing the sales of two and three bedroom units indicates approximately \$13,750 more was paid for a three bedroom unit;
- (3) all the comparable sales prices between 1987 and 1989 were will within the range of the Property's assessment;
- (4) the Taxpayers' purchase price was below market value with a \$5,000 builder's closing incentive; and
- (5) the Taxpayers' ratio analysis is flawed because they compared their below-average purchase price for a two-bedroom unit to three-bedroom units to arrive at their ratio.

The board's inspector reviewed the assessment-record card and the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the assessment was proper. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

Board's Rulings

Based on the evidence, we find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the City supported the Property's assessment.

The issue always before the board in any appeal is whether the property is disproportionally assessed. Disproportionality is determined by examining market evidence, estimating market value of the property and then relating that market value to the general level of assessment within the community. For the 1991 tax year, the department of revenue administration determined that the general level of assessment was approximately 56% according to its ratio study and equalization ratio. Neither party submitted any evidence to the contrary as to the general level of assessment for 1991. Based on this ratio the indicated market value of the Taxpayers' Property is \$203,900 ($\$114,200 \div .56$). This indicated market value does not seem unreasonable relative to the few sales of units that were arms-length sales during 1990 and 1991.

Most of the market evidence submitted by the Taxpayer related to sales significantly earlier than the tax year under appeal or properties that were either distressed sales or foreclosure sales and therefore not credible evidence of market value. The Taxpayers referenced a comparative market analysis performed in March of 1992 but no documentation was submitted of this estimate. In short, the Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of

assessments generally in the City. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

The Taxpayers further argued that their lower cost in finishing off a third bedroom should be reflected in the assessment. Cost is but one approach to value. The City relied on the market approach in estimating the contributory value of a finished third bedroom. This approach showed the market was recognizing more than what the Taxpayers' actual costs were. In this case, the board finds the market approach more properly reflects the market perception of the contributory value of the third bedroom. In New Hampshire, the supreme court has recognized that no single method is controlling in all cases, Demoulas v. Town of Salem, 116 N.H. 775, 780 (1976), and the tribunal that is reviewing valuation is authorized to select any one of the valuation approaches based on the evidence. Brickman v. City of Manchester, 119 N.H. 919, 920 (1979).

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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 reconsideration

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motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. 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 Otto and Joyce Cardinale, Taxpayers; and Chairman, Board of Assessors, City of Portsmouth.

Dated: June 7, 1994

Lynn M. Wheeler, Deputy Clerk

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