

**John & Virginia Urdi and
Robert & Susan Keller**

v.

City of Concord

Docket No.: 11572-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1991 assessment of \$124,300 (land \$33,500; buildings \$90,800) on a 2-family duplex on a 8,400 square-foot lot (the Property). The Urdis own one quarter undivided interest in the Property and the Kellers own three quarters undivided interest. The City taxed the distinct interests separately. However, this decision consolidates the interests for efficiency purposes. 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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried their burden and proved disproportionality.

At the hearing the City requested the board dismiss the appeal due to the Taxpayer not allowing access to the Property as provided in RSA 74:17 (Supp 1994). The board denies the City's motion based on the testimony that

the Taxpayers did not actually refuse access but could not find a mutually convenient time acceptable to the City, Taxpayers and the tenants of the Property.

The Taxpayers argued the assessment was excessive because:

- (1) the Property is not in as good condition and is smaller than the nearby Hampe property and yet is assessed for more than the Hampe property;
- (2) some of the second floor is not usable due to the sloping walls;
- (3) the kitchen and bathrooms have not been renovated while the Hampe property has been renovated;
- (4) no property in the immediate neighborhood has sold for values close to those assessed by the City;
- (5) the Property has only three convenient parking spaces due the location of the neighbors chain-link fence along the Property's southern line;
- (6) the stairs to the second floor are narrow;
- (7) The City's comparables are generally in better neighborhoods than the Property.

The City argued the assessment was proper because:

- (1) an appraisal prepared by the City estimated the market value by the market approach as of April 1, 1991 of \$115,000;
- (2) the Hampe property received an adjustment at the time of the 1990 reassessment reviews which was excessive and resulted in an underassessment on the Hampe property;
- (3) the Hampe property has a much smaller lot which limits parking while the Taxpayer's Property has adequate room for four cars for the duplex;

Board's Rulings

Based on the evidence, we find the correct assessment should be \$115,200 (land \$33,500; building \$81,700). This assessment is ordered because:

1) the board finds an additional 7% depreciation should be allowed on the building for its lack of renovation, general condition and utility of the second floor due to narrow stairway;

2) these were factors the board determined the City did not properly consider (see Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975)); and

3) this revised assessment equates to an indicated market value of \$106,700 when equalized by the City's 1991 equalization ratio ($\$115,200 \div 1.08$).

No further adjustment is warranted because the board finds the Hampe property, the Taxpayers' primary comparable was underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., *id.*

If the taxes have been paid, the amount paid on the value in excess of \$115,200 shall be refunded with interest at six percent per annum from date

paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the City shall also refund any overpayment for 1992, 1993 and 1994. Until the City undergoes a general reassessment, the City shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) 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. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Susan Keller, representative for the Taxpayers; and Chairman, Board of Assessors of Concord.

Dated: April 19, 1995

Valerie B. Lanigan, Clerk

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