

Arthur C. Morrow

v.

City of Portsmouth

Docket No.: 12069-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1991 assessment of \$75,900 (land \$17,600; buildings \$58,300) on commercial condominium unit 2B in the Market Wharf I 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 prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) residential units were originally marketed at a 20% premium over commercial units;

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- (2) five commercial units for rent or sale in 1991 received no market response;
- (3) the Taxpayer relied on the only available comparable sales, which were residential units, to prove that both residential and commercial units suffered a similar decline in value; and
- (4) bank-owned sales should be considered when setting comparable-sale values because they represent the largest percent of market sales.

The City argued the assessment was proper because:

- (1) the Taxpayers two sales were not arm's-length transactions as they were mortgage conveyances following foreclosure; however, the sales still support the Property's per-square-foot price;
- (2) the statement that residential units sold for 20% higher than commercial units is not supported by the sales data;
- (3) a residential unit and a commercial unit sold as one package for \$254,000 in August, 1990; the residential unit resold in November, 1990, for \$110,000, which indicated a \$144,000 contributory value of the commercial unit;
- (4) the Taxpayer's comparables were given little weight because they sold 11 and 15 months after the reassessment date and the seller was distressed; and
- (5) an August, 1990 residential sale, when time adjusted to April 1, 1991, supports the Property's assessment.

#### Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed. Neither party challenged the Department of Revenue Administration's equalization ratio of 56% for the 1991

tax year for the City of Portsmouth. The Property's equalized value is

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\$135,500.

The Taxpayer stated there was no demand for commercial units for rent or sale in 1991 and, therefore, the Property was compared to residential unit resale prices in the absence of any commercial comparables. The Taxpayer did not submit any evidence of income and expenses on the subject Property or comparable commercial properties that were being leased in 1991. No appraisal reports were submitted to support a fair market value, nor did the Taxpayer give the board any evidence of his estimate of the Property's fair market value as of April 1, 1991.

The City's evidence of the sale of a residential unit and commercial unit package and the resale of the residential unit three months later indicated the value of the sale's commercial unit to be \$144,000. Further, the paired sales technique employed by the City on the residential sales noted by the Taxpayer indicates the Property's per-square-foot price is reasonable.

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

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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 Arthur C. Morrow, Taxpayer; and Chairman, Board of Assessors, City of Portsmouth.

Dated: July 13, 1994

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Lynn M. Wheeler, Deputy Clerk

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