

**Priscilla Van Loon**

**v.**

**City of Portsmouth**

**Docket No.: 12094-91PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1991 assessments of:

\$118,900 (land \$10,500; buildings \$108,400) on Lot 6, a 10,050, square-foot lot with a three-unit home; and

\$59,700 (land \$6,600; buildings \$53,100) on Lot 39/3, a retail condominium unit in the Market Street Condominiums (the Properties).

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 abatements is denied.

The Taxpayer has the burden of showing the assessments were 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 submitted a lengthy brief to substantiate overassessment on Lot 6. The brief detailed the physical problems with the Property, e.g., attic access, lack of insulation, steep and narrow passageways, inadequate parking space, poor water drainage and basement flooding, and the Property's close proximity to the public sidewalk and the abutting police department and parking garage. The Taxpayer further argued the assessment on Lot 6 was excessive because:

- 1) the Property is the oldest of any comparable property (1678), but was given only a 20% depreciation for age;
- 2) a November, 1990 appraisal estimated a \$200,000 value, equating to \$102,500 in 1991, and the appraisal was done before the abutting parking garage was constructed;
- 3) a fully restored, antique property adjacent to the Property was assessed \$17,000 less;
- 4) the standard 10%, obsolescence-influence depreciation for 2-to-3 story, multi-family homes was not applied to the Property; and
- 5) the Property was assessed a cost and design factor, yet neighboring antique homes were not assessed this factor.

The City argued the assessment on Lot 6 was proper because:

- 1) the Property is in a desirable location and is close to the waterfront;
- 2) the Taxpayer's appraisal stated there were no external detriments to warrant economic obsolescence, and this depreciation is not mandatory;
- 3) the cost and design factor was applied only to 2-to-3 family homes and the Taxpayer's abutters are single-family homes;

- 4) the Taxpayer's comparables were not comparable in size or location, and the appraiser made computation errors and did not adjust for differences in the properties;
- 5) a comparable unit sold in July, 1990 for \$250,000, which supports the Taxpayer's appraiser's \$80,000, per-unit assessment; and
- 6) the best indicator of value is per-square foot prices because per-unit prices do not account for property differences.

The Taxpayer argued the assessment on Lot 39/3 was excessive because:

- 1) the Property floods and has no storage space, heating system or hot water, and the bricks need resealing;
- 2) the Property was purchased in 1989 and was converted from a restaurant to the art showroom, but the assessment was never adjusted;
- 3) larger units with more amenities had the same per-square foot price as the Property;
- 4) the assessment was excessive compared to similar properties; and
- 5) the assessment should have been \$42,000 to \$46,000.

The City argued the assessment on Lot 39/3 was proper because:

- 1) condominiums were appraised using the market approach to value, which relied on the paired-sales technique of resales, and the same methodology was used throughout the City;
- 2) comparable sales in 1989 and 1990 supported the assessment and the Taxpayer's \$140,500 purchase price;
- 3) since the Taxpayer never obtained a building permit to change the Property, the assessor was not aware of any changes and did not adjust the assessment; and
- 4) the Property's assessment was well within the range of comparable properties, and the values on all condominiums declined at the same rate.

#### Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Properties' assessments were disproportional. We also find that the City supported the Properties' assessments for the following

reasons:

Lot 3

- 1) The Property is located in a desirable neighborhood close to the Portsmouth waterfront and although the Taxpayer's appraiser adjusted the Property for its condition, no adjustment was made for its superior location.
- 2) The City adequately adjusted the Property for any physical and functional obsolescence and explained the 1.05 cost and design factor which was applied to 2-to-3 family homes.
- 3) The Taxpayer's appraisal used two sales of duplexes and one sale that had little similarity to the subject. The City submitted evidence of a sale similar to the subject in June, 1990 for \$250,000 which supports an \$80,000 per unit value.
- 4) The appraiser gave most weight to the per unit method and computed the subject as 2.5 units. The appraiser arrived at a value per-square foot of gross building area of \$213,750 based on 2,850 square feet. The City stated the 15' x 16' section is two stories and the actual gross area of the subject was 3,090 resulting in a per-square foot value of \$216,300. The Taxpayer stated in a December, 1991 letter that there was no attic over the 15' x 16' section. The board finds the per-square foot method to be the most reasonable approach to value in this case. The values arrived at by both the appraiser based on 2,850 square feet and the City assessor based on 3,090 square feet produces indicated values of \$119,700 and \$121,100 respectively based on the equalization ratio of 56%. The 1991 assessment was for \$118,900 which is below both indicated values, therefore, the board finds the assessment is proper.

Lot 6

- 1) the Property was purchased in April, 1989 for \$140,500; unit 5, a residential unit sold in August, 1989 for \$135,000 which was some indication that the market was showing no difference in sales of residential versus commercial units.
- 2) The City's paired-sales technique indicated the assessment was proper.
- 3) The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer 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.

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 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 Priscilla Van Loon, Taxpayer; and Chairman, Board of Assessors, City of Portsmouth.

Dated: June 22, 1994

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Lynn M. Wheeler, Deputy Clerk