

Robert J. and Nancy M. Freeman

v.

City of Portsmouth

Docket No.: 12410-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1991 assessment of \$105,300 (land \$11,000; buildings \$94,300) 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 Property's 1990 assessment was abated to \$100,000 pursuant to board order and this assessment should have carried forward until there was a City-

wide reassessment;

(2) the City adjusted the Property's assessment, but did not adjust any other board-ordered assessments in the City;

(3) the City assumed the Property's value decreased only 6% since the equalization ratio increased 6%, yet the value actually decreased 12%;

(4) the assessment increased when values in the City did not increase;

(5) the City's comparable unit 118 sold 15 months after the April 1, 1991 assessment date;

(6) a comparable unit 50 sold in 1992 for \$180,000 after being on the market over one year, and this price was the best indicator of value;

(7) four, type-A units sold for an average \$179,375 price in 1990; and

(8) the Town's records show the 1991 assessment was \$100,000, yet the actual assessment was \$105,300.

The City argued the assessment was proper because:

(1) the Taxpayers compared their type-A unit to only one other unit in the complex -- a type-D unit, which was a more expensive unit per the developer;

(2) the Taxpayers' comparable unit 50 sold 10 months after the April 1, 1991 assessment date and was a type-D unit;

(3) the Taxpayers' purchase price, when time adjusted to April 1, 1991, equates to \$109,400, which supports their 1991 assessment;

(4) a sunroom and deck were added to the Property after the Taxpayers' purchase, which increased the value;

(5) the assessment increased from the board's ordered assessment because the DRA's equalization ratio increased 6%;

(6) the City did not rely on unit 118 for comparison, but rather, the unit was used to show that the Taxpayers' comparable unit was invalid;

(7) the four, type-A units that sold in 1990 were distress sales; and

(8) the only arm's length sales in the entire complex were type-A units that sold in 1990 for \$200,000 and \$195,000 and both support the Property's assessment, especially since the Property has more amenities than those units.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property's assessment was disproportional.

Each year municipalities are required to review assessments and adjust for physical or market changes. RSA 75:8. The board's decision in the Taxpayers' 1990 appeal found, based on the evidence submitted, that the market value in April of 1990 was \$200,000. The 1990 equalization ratio was 50%. Thus, the board's ruling was the proper assessment value should be \$100,000.

By April 1, 1991, new market evidence was available and subsequently a 1991 equalization ratio was determined. Subsequent to April, 1990, two arm's-length sales had occurred of comparable units. Unit 1 sold in August of 1990 for \$200,000 and unit 45 sold in September for \$195,000. Even the other 1990 sales of A units which appeared to be distressed sales sold from \$180,000 to \$190,000 including the Taxpayers' unit. The market value of the subject Property is in the higher end of this range due to the additional features of the Taxpayers' unit (sunroom and deck).

The department of revenue administration determined the 1991 ratio to be 56%. Equalizing the assessment of \$105,300 by the equalization ratio provides an indicated market value of \$188,036, well within the market value range indicated by the sales mentioned above.

While the board finds that the assessment is proportional, the board finds the City's methodology indicates the need for general reassessment. The board understands that the City was faced since its last revaluation with the proliferation of condominiums and by necessity had to assess them directly related to market indications during the various years that they were built and marketed. However, a systematic process to ensure consistency amongst units and instill taxpayers' confidence appears to be lacking. The board notes that the City has, on its own, undertaken a reassessment to be effective for the 1994 tax year. The board hopes and anticipates that this reassessment will result in a more consistent methodology and improve the taxpayers' confidence in the process.

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

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 Robert J. and Nancy M. Freeman, Taxpayers; and Chairman, Board of Assessors, City of Portsmouth.

Dated: June 7, 1994

0008

Lynn M. Wheeler, Deputy Clerk

Robert J. & Nancy M. Freeman

v.

City of Portsmouth

Docket No.: 12410-91PT

Order re: Motion for Rehearing

On June 22, 1994 the Taxpayers filed a Motion for Rehearing (Motion). The City filed an objection to the Motion on June 28, 1994.

The board grants the Motion and schedules a rehearing on September 28, 1994 at 9:00 a.m.

In addition to the issues raised in the Motion, the City should be prepared to testify as to the "good faith" basis (See TAX 203.05) for the 1991 assessment not being abated to the 1990 ordered assessment by the board.

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 Robert J. and Nancy M. Freeman, Taxpayers; and Chairman, Board of Assessors, City of Portsmouth.

Dated:

Valerie B. Lanigan, Clerk

0007

Robert J. and Nancy M. Freeman

v.

City of Portsmouth

Docket No.: 12410-91PT

DECISION RE: MOTION FOR REHEARING

On August 9, 1994 the board granted the Taxpayers' Motion for Rehearing and scheduled a rehearing for September 28, 1994. At the hearing the board received testimony and evidence as to the basis of the City adjusting the board's 1990 ordered assessment for the 1991 tax year.

The board reaffirms its decision of June 7, 1994 and finds the Taxpayers did not carry their burden and prove disproportionality. While the board has found in its earlier decision the City's methodology indicating a need for a general reassessment, the board also found that the market evidence that existed for the 1991 tax year indicates that the assessed value of \$105,300 is reasonable and proportionate. To have reversed the board's earlier decision and found that the ordered 1990 assessment of \$100,000 should have been carried forward to 1991 would have resulted, based on the market evidence submitted in the 1991 appeal, in the property being underassessed and therefore disproportionately assessed.

The City and the board are bound by the constitutional mandates of Part

II, Article 5 that require assessments be "proportional and reasonable." The

statutes, specifically RSA 76:17-c I and II, must always be read to effectuate the constitutional requirement of proportional assessments. The board finds the City's review of the 1991 assessment and its adjustments of the board's 1990 ordered assessment is proper both from the context of the statutory requirements (RSA 75:1, RSA 75:8 and RSA 76:17-c) and in keeping with the requirements of the New Hampshire Constitution.

Any appeal from this decision must be done as follows:

Taxpayer. The Taxpayers must file, pursuant to RSA 541:6, an appeal to the New Hampshire Supreme Court within 30 days from the date of this decision.

City. The City must file a motion for a rehearing of the decision within 20 days of the clerk's date below. RSA 541:3; TAX 201.37.

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 Robert J. and Nancy M. Freeman, Taxpayers; and Chairman, Board of Assessors, City of Portsmouth.

Dated: _____
Valerie B. Lanigan, Clerk