

Edward J. Pouliot

v.

City of Manchester

Docket No.: 12617-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1991 \$102,500 assessment on lot 295/6 (the Property). The Taxpayer owns two other properties that were also appealed but were settled by the parties. For the reasons stated below, the appeal for abatement is granted.

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 carried his burden.

The Taxpayer argued the assessment was excessive because:

- (1) it exceeded the \$65,400 assessment on a nearby comparable;
- (2) it exceeded sales that occurred in the neighborhood;
- (3) it exceeded the value based on the income, expense and vacancy figures (19%);
- (4) there were discrepancies in the assessments on other properties, for example differences in the per-square-foot prices of land and buildings; and

(5) the assessment should have been \$70,000.

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The Taxpayer also discussed his disagreements with the City's comparables, including the location issues.

The City submitted a report to support the assessment. This report presented several nonbank sales and analyzed those sales by certain units of comparison, including building area, price/unit and gross-rent multiplier. The City then compared these units of comparison to the units-of-comparison values calculated from the Property and its assessment. The City argued this report supported the assessment. The City also argued the Taxpayer's comparables were not arms-length sales, and thus, they could not be relied upon in determining value.

#### Board's Rulings

Based on the evidence, we find the correct assessment should be \$97,375. This reflects a 5% reduction due to locational issues.

The boards finds the assessment warrants a 5% reduction due to the property's inferior location and neighborhood as compared to the City's comparables. We find no further adjustment is warranted.

The board's focus is on market value and market data. RSA 75:1. The City made a good demonstration that the assessment, once adjusted, would be in line with the sales of comparables. The Taxpayer's sales could not be relied upon because they were bank sales. Bank sales do not qualify as market sales because the bank is not your typical seller with typical selling motives.

The assessment on 57 Rimmon was not accepted because, given the other assessment and sales information, that property may have been underassessed. The underassessment of other properties does not prove the overassessment of

the Taxpayer's Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399,

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(1987). For the board to reduce the Taxpayer's 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.

The correct 1991 assessment is land \$40,500; building \$56,875; total \$97,375. If the taxes have been paid, the amount paid on the value in excess of \$97,375 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 and 1993. 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 twenty (20) 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 law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in

board rule TAX 201.37(e). Page 4  
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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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Edward J. Pouliot, Taxpayer; and Chairman, Board of Assessors of Manchester.

Dated: November 29, 1994

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Valerie B. Lanigan, Clerk

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