

James G. Noucas, Jr.

v.

City of Portsmouth

Docket No.: 15537-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1994 assessment of \$70,600 on a condominium unit in the South Commons Condominiums (the Property). The Taxpayer also owns, but did not appeal, two other properties in the City with a combined, \$239,700 assessment. 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 granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or was unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried

this burden.

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The Taxpayer argued the assessment was excessive because:

- (1) three identical units sold for approximately \$45,000 within the last five years;
- (2) the Property was purchased in August 1986 for \$90,000, and values have since declined;
- (3) a comparable unit was purchased at foreclosure by a bank for \$70,000; the unit was marketed through a real estate agency for three years and sold in March 1993 for \$43,000 (the City erroneously listed the sale price as \$86,000);
- (4) another comparable unit was listed for a year and finally sold for \$40,000;
- (5) units are selling for far below their assessed values;
- (6) the City relied on a comparable unit to show equity, yet that unit is newer than the Property and is located in an old hotel containing a restaurant and pool and within walking distance to downtown;
- (7) the City's 1995 comparable sale has no bearing on the 1994 values; and
- (8) the comparable \$43,000 sale was an arm's-length transaction as evidenced by the realtors and the purchase and sales agreement.

The City argued the assessment was proper because:

- (1) the Property is assessed consistently with other units in the complex;
- (2) comparable units sold in May 1995 for \$62,000, February 1994 for \$65,000, and July 1994 for \$69,000 -- all of which support the Property's assessment;
- (3) the Property's per-square-foot value is well within range of comparable units' per-square-foot values; and
- (4) the Taxpayer's comparable \$43,000 sale was not an arm's-length transaction and not indicative of market values.

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BOARD'S RULINGS

Based on the evidence, the board finds the proper assessment to be \$60,000.

The board arrives at this conclusion by considering four of the sales submitted by the parties: the sale of unit 2 in South Commons Condominiums in March 1993 for \$43,000; the sale of unit 5 in South Commons Condominiums in May 1995 for \$62,000; the sale of the unit at 401 State Street in February 1994 for \$64,000; and the sale of a unit at 403 Congress Street in July 1994 for \$69,000.

This is a prime example of where the available sales do not indicate a consistent market and comparison and judgement is needed to arrive at a proper assessment.

On February 6, 1997 the board viewed the exterior of the Property and

its neighborhood and the exterior of the State Street and Congress Street sales. The board's conclusion of a \$60,000 assessment is based on a finding that the State Street and Congress Street sales were in a generally more favorable location (closer to downtown) and in buildings that, at least from the exterior, were of superior quality. The board concludes that if these units were selling in the mid to upper sixties then the subject Property needed to be less than these sales. The board considered the sale of unit 2 in 1994 for \$43,000 but in the final conclusion does not give it as much weight as the other three sales as it appears to be lower than what the general market was indicating. The board also considered the sale of unit 5 in the Property's same complex and after adjusting it for the fact that it occurred in a slightly better market than the appeal date gives it some weight in arriving at the \$60,000 assessment. In short, the board applied judgement to the market data submitted by the parties in arriving at its decision.

"Given all the imponderables in the valuation process, [j]udgement is the touchstone." Public Service Co. v. Town of Ashland, 117 N.H. 635, 639 (1977).

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If the taxes have been paid, the amount paid on the value in excess of \$60,000 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, unless the City has undergone a general reassessment, the City shall also refund any overpayment for 1995 and 1996. 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 "reconsideration 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 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. 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

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to James G. Nocas, Jr., Taxpayer; and Chairman, Board of Assessors, City of Portsmouth.

Date: February 26, 1997

Valerie B. Lanigan, Clerk

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