

George A. and Erica C. Dodge
Barbara Schmidt

v.

City of Portsmouth

Docket No.: 15635-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1994 assessment of \$291,700 (land \$62,200; buildings \$229,500) on a .10-acre lot with a single-family house (the Property). The Taxpayers also own, but did not appeal, four other lots in the City with a combined, \$561,900 assessment.

The parties submitted copies of the non-appealed properties' assessment record cards and stated they were properly assessed. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or was unlawful, resulting in the Taxpayers 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 Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

(1) all properties should be measured by the same yardstick and this was not

done by the City;

(2) two of the City's comparables, 112 and 130 Gates Street, are "mansion houses", with high ceilings and the best materials and should not be considered comparable;

(3) the Property was built as a rooming house with low ceilings and doors;

Page 2

Dodge/Schmidt v. City of Portsmouth

Docket No.: 15635-94PT

(4) the pedestrian easement on the Property has a negative impact; and

(5) the Property should have been compared to 55 and 180 Gates Street or 215-217 Washington Street as they were more comparable properties.

The City argued the assessment was proper because:

(1) assessment should be revised to \$258,000 to correct for the third floor living area and general condition of the house; and

(2) other comparable properties are similarly assessed in the neighborhood.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not prove they were disproportionally assessed relative to market value.

The Taxpayers' primary arguments of overassessment were: 1) several sales of houses in the area were more comparable than the City's sales and the assessments of those properties were significantly below the sales prices; and 2) the assessment did not recognize some of the negative factors of the house (e.g. low ceiling height, smaller living area on the third floor and the original boarding house construction). The board finds neither of these reasons warrant an abatement.

First, all assessments must be based on market value. RSA 75:1. In this case, the Property sold in July 1996 for \$315,000. This sale was acknowledged by both parties as being arm's-length and representative of the Property's market value. Where the sale of the subject property is shown to

be an arm's-length market sale, sales price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988).

The board finds the other sales submitted by the parties, four by the City and three by the Taxpayers, showed differing assessment-to-sale ratios as summarized in the following chart.

<u>Assessment to</u>	<u>Street</u>	<u>Owner</u>	<u>Assessment</u>	<u>Sale Price</u>	<u>Sales Ratio</u>
217	Washington	Tracey	156,500	267,000	.59
180	Gates	White	209,600	315,000	.67
111	Gates	Mullin	246,800	282,500	.87
48	Manning	Dodge	291,700	315,000	.93
99	Gates	Dechard	290,800	310,000	.94
127	Gates	Lockhart	220,500	230,000	.96
55	Gates	Page	170,700	167,500	1.02

Page 3
Dodge/Schmidt v. City of Portsmouth
Docket No.: 15635-94PT

However, the median ratio of these sales (93%) is reasonably close to the 1994 town-wide ratio of 97% as determined by the department of revenue administration (DRA). While certainly there are some properties that were assessed significantly less than their sales price such possible underassessment of those properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' 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. Further, the court in the Appeal of Andrews, 136 N.H. 61 (1992) held there can only be one level of assessment or ratio in a municipality, not multiple ratios for different property types. Neither party

argued a ratio different than that calculated by DRA. Therefore, the board finds the ratio of 97% as determined by DRA is reasonable and generally supported by the evidence submitted in this case.

Second, the board finds the City's willingness to apply the 1995 adjusted assessment of \$258,000 to 1994 is not appropriate based on the market evidence submitted by the parties. The City testified it adjusted the assessment to account for the smaller living space on the third floor and by dropping the building's condition from good to average. The City employed one of three approaches to value, the cost approach, in estimating the building portion of the assessment. The cost approach, by estimating replacement cost and various depreciations, attempts to reflect market actions. In this case, while the City's adjustments attempt to recognize certain physical factors of the Property, the adjustments underestimate market value based on the sales data submitted. If the board were to agree with the City's revised assessment, it would result in the Taxpayers being underassessed and not paying their

appropriate share of the tax burden as required by the New Hampshire

Page 4

Dodge/Schmidt v. City of Portsmouth

Docket No.: 15635-94PT

Constitution and RSA 75:1. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

A motion for rehearing, reconsideration or clarification (collectively "rehearing 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 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 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 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. 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

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to George A. and Erica C. Dodge and Barbara Schmidt, Taxpayers; and Chairman, Board of Assessors, City of Portsmouth.

Date: December 11, 1996

Valerie B. Lanigan, Clerk