

Wilfred G. Caouette

v.

City of Nashua

Docket No.: 17547-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1997 assessment of \$39,000 (building only) on a one story condominium (the "Property"). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or 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 failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

(1) based on seven sales of similar condominiums in the year prior to the assessment date, the average sale price per square foot was \$38.40;

- (2) applying this average price per square foot to the Property's 877 square feet indicates a proper value of \$33,600;
- (3) during an informal review City assessing staff stated the Taxpayer's analysis indicated the Property was overassessed, yet no adjustment was made;
- (4) the second floor decks were being replaced and the outside of the units were being painted during the summer of 1997; and
- (5) the City improperly excluded the deck from its square-footage calculations.

The City argued the assessment was proper because:

- (1) one of the Taxpayer's sales sold significantly less than the other units, and thus, lowers the average sale price;
- (2) based on an analysis of ten verified sales within the Taxpayer's neighborhood, the market value of the Property is \$38,900;
- (3) the ten sales were chosen based on similar location and proximity to the assessment date; and
- (4) the median sale price of the analysis is \$45.00 per square foot; the Property is assessed at \$46.75, within a reasonable range of the median sale price.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove his assessment is disproportionate.

The board gives no weight to the Taxpayer's value conclusion based on the analysis of seven sales chosen by the Taxpayer. One of the sales (9 Strawberry Bank) sold for significantly less (40% to 50% less) than most of the other units that sold in the same development during

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either the tax year in question or the year preceding the assessment date. Inclusion of this one sale significantly reduces the average of the sales price per square foot and arrives at an incorrect

indication of market value when applied to the Taxpayer's Property. The board finds the City's presentation to be significantly more credible as it is based on sales of units of similar size and in reasonable proximity to the assessment date. The City used the effective square foot of the units for its calculation rather than the gross area. The effective area which weights living space at a factor of 1.0 and the decks at a factor of .10 is a better unit of comparison than giving equal weight to living area and deck area as the Taxpayer argues.

The board finds no evidence was submitted to support the Taxpayer's argument that the reconstruction of the decks and the repainting of the exterior of the units in the summer of 1997 would have had a significant affect on the unit's marketability. The board concludes that the fact that the condominium association was repairing unsafe decks and painting the units could be seen as a positive market influence by a prospective purchaser during that time frame.

Lastly, the board finds the City's inclusion of the sale that occurred on April 25, 1997 is entirely appropriate. Sales data which is most proximate to the appraisal/assessment date is generally given more weight as long as the conditions that existed during the time of the subsequent sales are representative of the market conditions as of the assessment date. Even if that sale were to be removed from the City's analysis, its general value conclusions would be essentially the same.

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
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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 that a copy of the foregoing decision has this date been mailed, postage prepaid, to Wilfred G. Caouette, Taxpayer; James M. McNamee, Esq., Counsel for City of Nashua; and Chairman, Board of Assessors of Nashua.

Date: May 3, 1999

Lynn M. Wheeler, Clerk

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