

**David Flouton**

**v.**

**City of Portsmouth**

**Docket No.: 17906-98PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1998 assessment of \$525,500 (land \$149,300; buildings \$376,200) on a 13-unit apartment building on a .292-acre lot (the "Property"). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 38 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer ("Mr. Flouton") argued the assessment was excessive because:

(1) a refinancing appraisal ("Bramley Appraisal") estimated a \$480,000 market value as of March 1998;

(2) the Property has limited parking with 14 spaces for 13 apartment units;

(3) tenants are mostly elderly, retired, single people on fixed incomes, which negatively impacts on potential rents;

(4) the City assessed a comparable property (1137 Islington Street) with 18 residential units much less than the Property;

(5) the Taxpayer and the Town use one common comparable sale (340 Lafayette Road) which sold for \$37,917 per unit, supporting the Taxpayer's \$480,000 estimate of market value for the Property;

(6) the board's review appraiser's report is flawed for several reasons, detailed in Taxpayer's Exhibit #2;

(7) the income approach used by the City and the board's review appraiser is flawed because it does not take into account the Property's limited parking and the higher expenses caused by higher density (more people in each apartment as rents increase); and

(8) the Taxpayer's market rent data (in the Bramley appraisal) is the most reliable.

The City, through its assessor William Boatwright, argued the assessment was proper because:

(1) the Property is located on one of the "premier" streets in the City and is not dated or in disrepair;

(2) the City has the highest rental rates in the state;

(3) the Taxpayer's rental expenses are below market which may explain actual rents "far below"

market rents;

(4) with respect to parking: it is at a premium in the City and it is not uncommon even for young and middle-aged professionals in the City not to have a car; the studio and one bedroom units do not need more than one parking space; and the City has a public transportation system;

(5) the gross floor area is larger on the Property than on the City's comparable rentals;

(6) market rents and expenses should be used to determine the Property's market value; if actual rents rather than market rents are used in the income approach, the capitalization rate should be reduced, resulting in a similar valuation; and

(7) a gross income multiplier approach also supports the City's valuation.

Prior to the hearing being scheduled, and based on the City's request, the board ordered the Taxpayer to allow the City to inspect the Property and directed the board's review appraiser, Stephan Hamilton, to accompany the parties at the inspection and issue a report on his findings.

Mr. Hamilton reviewed the file, inspected and photographed the Property, reviewed the reports submitted by both parties and submitted a written report to the board on May 25, 2000. Both parties were sent a copy of Mr. Hamilton's report and were allowed an opportunity to provide written and verbal comments to the board. Mr. Hamilton was also called as a witness at the July 14, 2000 hearing to respond to board questions and questions by the parties. Further,

he was also allowed to comment on Mr. Flouton's and Mr. Boatwright's testimony. Once the

record of the hearing was closed, the board had no discussions with Mr. Hamilton regarding the Property and has based its decision on all of the evidence received at the hearing.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$451,000. This assessment is based on a market value finding of \$550,000 and an equalization ratio of 0.82.

### **Valuation Approach**

There are three approaches to value: 1) the cost approach; 2) the comparable sales approach; and 3) the income approach. Appraisal Institute, The Appraisal of Real Estate 81 (11th ed. 1992).

While there are multiple approaches to value, not all are of equal import in every situation. Id.; International Association of Assessing Officers, Property Appraisal and Assessment Administration 108 (1990). In New Hampshire, the supreme court has recognized that no single method is controlling in all cases, Demoulas v. Town of Salem, 116 N.H. 775, 780 (1976), and the tribunal reviewing valuation is authorized to select any one of the valuation approaches based on the evidence presented. Brickman v. City of Manchester, 119 N.H. 919, 920 (1979).

Given the evidence presented, we find the income approach is the most appropriate approach to value because “income-producing real estate is typically purchased as an investment,

and from an investor's point of view earning power is the critical element affecting property value." The Appraisal of Real Estate at 449. The board concurs with Mr. Hamilton that it is more appropriate to value the Property based on the direct capitalization model as opposed to the discounted cash flow ("DCF") analysis used by Mr. Bramley. "Direct capitalization makes use of a single year's income and a market-derived factor or overall capitalization rate. . . .In contrast, the application of a yield capitalization requires that the practitioner set forth explicit forecasts of income, expenses, and changes in vacancy levels and expenditures over the holding period." The Appraisal of Real Estate at 462, 463. The DCF analysis may be more appropriate if significant changes in the income and expenses were anticipated or there were large expenses to be incurred at irregular intervals during the holding period, but the evidence indicates that this is not the case with this Property.<sup>1</sup>

The board has reviewed the analyses performed by both parties and Mr. Hamilton and finds the comparable sales approach is of lesser significance for the Property because of the lack of similar apartment sales (in terms of number of units, condition, and other variables).

The board agrees with all parties that the cost approach should not be considered because it is typically used to value new or nearly new improvements and because of the difficulty in quantifying accrued depreciation in older buildings.

---

<sup>1</sup> Mr. Bramley estimated a 3% increase in both the income and expenses over the holding period.

Having determined the most appropriate approach is the income approach, the board will now address the following components of that approach to arrive at the proper valuation conclusion:

- 1) the potential gross income;
- 2) vacancy and collection loss estimates;
- 3) appropriate expense deductions; and
- 4) the appropriate capitalization rate.

### **Potential Gross Income**

The board finds the following rents and potential gross income to be the most appropriate:

Studio - 1 @ \$500 per month - \$6,000/yr.

1 bedroom - 4 @ \$600 per month - \$28,800/yr.

2 bedrooms (with the exception of unit 11) - 7 @ \$725 per month - \$60,900/yr.

Unit 11 @ \$750 per month - \$9,000/yr.

Laundry income - \$1,350/yr.

Total Potential Gross Income - \$106,050

The board did not find Mr. Bramley's rent estimates to be convincing because he used actual rents<sup>2</sup> instead of market rents. Further, Mr. Flouton testified most of the tenants were elderly, retired, long-term tenants-at-will with only one vehicle. He also testified the lack of adequate parking and amenities did not justify charging higher rents and the units would require substantial renovations to attain the higher rents. Mr. Boatwright testified the Property is located on one of the premier streets in the City within walking distance to downtown and employment opportunities and, further, that parking for all of the downtown area is at a premium. This evidence suggests the actual rents were in fact not market rents; therefore, they are not appropriate to establish a market value for the Property.

The board also did not adopt Mr. Boatwright's market rent estimates because he failed to take into consideration some relevant factors which would affect the rents: i.e., parking<sup>3</sup>, number of units, condition of the units<sup>4</sup>, and amenities included.

---

<sup>2</sup> On page 46 of Mr. Bramley's report, he states the actual rents ranged from 80 to 100% of market value.

<sup>3</sup> The board was not convinced the Property's location completely offset the limited parking and thus some adjustment to the comparables is appropriate.

<sup>4</sup>Because of the significant renovations (approximate cost - \$12,000) to

In arriving at its rent estimates, the board considered all the evidence presented and determined the rents listed above were appropriate in light of these factors.

### **Vacancy and Collection Loss**

Mr. Bramley assumed a vacancy and collection loss of 3%, but the Town and Mr. Hamilton both assumed 5%. The board finds 5% is more reasonable given the condition of the Property and its need for renovations.

### **Expenses**

In determining the proper expenses, the board has taken into consideration the estimates contained in the appraisals and Mr. Flouton's testimony regarding the condition of the Property and its expenses. The board finds the following expenses are reasonable:

Management (5%)	\$ 5,037
Maintenance and Repair	7,800
Replacement for Reserves	5,900
Utilities	10,000
Insurance	2,000
Administrative & General	<u>3,900</u>
Total	\$34,637

### **Capitalization Rate**

---

Unit 11, the board has assigned a higher rent as the market would take this higher quality into account.

The board finds a capitalization (“CAP”) rate of 9.80% is reasonable. To this CAP rate, the effective tax rate (“ETR”) of 2.20%<sup>5</sup> must be added resulting in a total capitalization rate of 12.0%. In arriving at its CAP rate, the board considered both the indicated CAP rates from the sales data submitted by both parties and the publications cited by Mr. Boatwright. The board finds the CAP rate from the sales data is a more reliable indicator than the studies provided by Mr. Boatwright (which do not factor in the slightly higher risk this Property bears); therefore, the board has used the mean indicated by the sales in arriving at its CAP rate.

### Calculation of Market Value by the Income Approach

Based on all the above findings, the board finds the market value by the income approach to be as follows:

<b>Income</b>	<u>Market</u>	<u>Annual</u>
Studio @ \$500/month (1)	\$ 500	\$ 6,000
1 bedroom @ \$600/month (4)	2,400	28,800
2 bedroom @ \$725/month (7)	5,075	60,900
2 bedroom @ \$750/month (Unit 11)	750	9,000
Laundry Income		1,350
<b>Potential Gross Income</b>		<b>\$106,050</b>
Vacancy & Collection Loss	5%	(5,303)
<b>Effective Gross Income</b>		<b>\$100,747</b>
<b>Operating Expenses</b>		

---

<sup>5</sup> ETR is calculated by multiplying Portsmouth’s 1998 tax rate of \$26.94 per thousand by the 1998 equalization ratio of .82.

Management	5%	5,037
Maintenance & Repair		7,800
Replacement for Reserves		5,900
Utilities		10,000
Insurance		2,000
Administrative & General		3,900
<b>Total Operating Expenses</b>		<b>34,637</b>
<b>Net Operating Income</b>		<b>66,110</b>
Overall Capitalization Rate	9.80%	
Effective Tax Rate	2.20%	
Total Capitalization Rate	12.00%	
<b>Indicated Value</b> (rounded)		<b>\$550,000</b>
<b>Indicated Assessed Value</b> (\$550,000 X .82)		<b>\$451,000</b>

**Assessment of Comparable Properties**

Mr. Flouton argued that 1137 Islington Street (with 18 residential units) was assessed for less per unit than his Property. He also argued that 340 Lafayette Road sold for \$37,917 per unit which supported his \$480,000 estimate of value for the Property. As Mr. Flouton indicated in Taxpayer’s Exhibit #3, although 1137 Islington Street has a similar number of units, it also has other features which the Property does not such as balconies/patios, a swimming pool, a duck pond, a large lawn, and consisted of multiple buildings rather than a single building. Given that the board has ruled the best indicator of value for the Property is the income approach, and given that there were sales, albeit not perfect sales, of apartment buildings/complexes, the board has not considered this property in its deliberations. The 1137 Islington Street property may possibly be underassessed but the underassessment of one property does not prove the

overassessment of the Taxpayer's Property. See Appeal of Michael D. Cannata, Jr., 129 N.H. 399, 401 (1987).<sup>6</sup>

Regarding the 340 Lafayette Road property, that property was analyzed by the appraisers, including Mr. Hamilton, in their sales comparison approach. During its deliberations, the board has considered this sale along with the other sales evidence presented and again has determined

the income approach to value should be given the greatest weight in estimating the market value of the Property.

If the taxes have been paid, the amount paid on the value in excess of \$451,000 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 1999. 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. See RSA 76:17-c I.

---

<sup>6</sup> For the board to reduce the Taxpayer's assessment because of the underassessment on other properties would be analogous to a weights and measures 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 yardstick to determine proportionality, not just comparison to a few other similar properties.

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

---

Michele E. LeBrun, Member

---

Douglas S. Ricard, Member

David Flouton v. Portsmouth  
Docket No.: 17906-98PT  
Page 13

Albert F. Shamash, Esq., Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to David Flouton, Taxpayer; and Chairman, Board of Assessors of Portsmouth.

Date: September 22, 2000

\_\_\_\_\_  
Lynn M. Wheeler, Clerk