

**Jeffrey S. and Marie A. Bowers**

**v.**

**City of Nashua**

**Docket No.: 18557-00PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “City’s” 2001 assessment of \$341,500 on a residential condominium (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) five C-1 units sold in 1997 within several months of each other, including the Property, and those sales should be utilized as benchmarks to set the differential location or view values for the 2000 assessment;

(2) the Property looks out onto a garden-style apartment building across the golf course and, thus, is in an inferior location compared to others who have only views of the golf course or distant mountain views; and

(3) the other end C-1 unit in the same building is assessed less than the Property.

The City argued the assessment was proper because:

(1) market evidence utilized during the 2000 update indicated no locational or view difference between units fronting on the golf course;

(2) the Taxpayers' reliance on 1997 sales is unreliable in interpreting the 2000 market because the market has improved significantly in the interim;

(3) based on the summary appraisal (Municipality Exhibit D), the Property is proportionally assessed when compared to other similar properties and sales more recent in time to the 2000 April 1 assessment date; and

(4) the Taxpayers' Property has a greater square footage of finished basement than the other C-1 end unit in the same building.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayers failed to prove the assessment was disproportional.

The 1997 sales evidence submitted by the Taxpayers does show that at that time the market was distinguishing between different types of views of the golf course. However, the Taxpayers did not submit more current market evidence that shows such a view distinction continued to be recognized in 2000. To the contrary, the four sales submitted by the City in its summary appraisal (Municipality Exhibit D) when time adjusted at 1% per month show no discernable price differential being paid for differing views. The board concludes, as the City

testified, that the stronger market in 2000 blurs any distinction that may have existed in 1997 as to views and location. Based on the board's experience,<sup>1</sup> it is not unusual when the real estate market is less robust that marginal distinctions between similar properties on the market at the same time are reflected in the consideration price. Conversely, when the market is quickly appreciating, as it was in 2000, such distinctions get blurred by the higher number of people competing for a limited number of properties on the market.

The board finds the City has documented in its assessment-record cards that the Taxpayers' Property has a greater square footage of finished basement area than the other end unit (Unit 95) and, thus, the Taxpayers' assessment is slightly greater.

Last, and most importantly, the Taxpayers stated several times during the hearing that the Property was not overassessed based on its market value potential as of April 2000, but simply that it was disproportionately assessed amongst similar units. The basis of all assessments is market value (RSA 75:1) and because the City has submitted market evidence as of April 2000 that supports the assessment and because the Taxpayers agree that the assessed value is market-value related, no basis exists for granting an abatement. If the Taxpayers had shown that there needed to be a differential assessment due to location and differing views while at the same time asserting the Property was properly assessed relative to its market value, then by inference, others with superior views would have to be underassessed. However, the underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Cannata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of underassessment of other properties would be analogous to a weights and

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<sup>1</sup> The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33 VI; Appeal of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

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 standard yardstick to determine proportionality. E.g., id.

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

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

**Certification**

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I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Jeffrey S. and Marie A. Bowers, 101 Hawthorne Village Road, Nashua, New Hampshire 03062, Taxpayers; Chairman, Board of Assessors, City of Nashua, Post Office Box 2019, Nashua, New Hampshire 03060; and David R. Connell, Esq., Nashua Office of Corporate Counsel, 229 Main Street, Box 2019, Nashua, New Hampshire 03061.

Date: July 11, 2003

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Anne M. Bourque, Deputy Clerk

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