

David and Claudette Dube

v.

City of Manchester

Docket No.: 19772-02PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “City’s” 2002 assessment of \$194,600 (land \$29,300; buildings \$165,300) on a two-family residence on 5,000 square feet of land (the “Property”). For the reasons stated below, the appeal for abatement is granted to the City’s recommended assessment of \$184,000.

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. The Taxpayers carried this burden relative to the appealed assessment of \$194,600 but not to the City’s recommended assessment of \$184,000.

The Taxpayers argued the assessment was excessive because:

- (1) a financing appraisal estimated the market value of the Property, as of August 28, 2002, to be \$240,000;
- (2) adjusting for appreciation back to the assessment date of April 1, 2002 results in a market value indication of \$228,220;
- (3) the third floor was assessed as finished living area when in fact it is unfinished attic space;
- (4) the three comparables contained in the financing appraisal were assessed at a lower level of assessment than the .766 level indicated by the department of revenue administration's ("DRA") equalization ratio; and
- (5) the assessed value should be in a range of \$151,000 to \$175,000.

The City recommended revising the assessment to \$184,000 and argued the revised assessment was proper because:

- (1) it reflects the fact that the third floor was incorrectly assessed as finished area;
- (2) it comports with the Taxpayers' financing appraisal market value of \$240,000 when adjusted by the .766 ratio; and
- (3) while the financing appraisal was as of August, 2002, any time adjustment appropriate to relate it to April 1, 2002 is approximately offset by several errors or omissions in the sales comparison adjustments.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$184,000.

The board finds the best evidence presented as to the Property's 2002 market value was the Taxpayers' financing appraisal which estimated a market value, as of August, 2002, of \$240,000. Proportionality is determined not by relative comparison to other assessments but by

a property's estimate of market value equalized to the general level of assessment. RSA 75:1 and Appeal of City of Nashua, 138 N.H. 261 (1994).

The board agrees with the City that the financing appraisal contains some factual errors that, if corrected, would result in a higher indicated market value as of August, 2002 which more than offsets any reasonable time adjustment to April 1, 2002. (The Taxpayers utilized a monthly rate of 1.14% to 1.46% (Taxpayer Exhibit 1, paragraph 9) while the financing appraisal utilized a .5% monthly rate. Further, an approximate 1.3% monthly rate of appreciation is indicated by comparing the City's 2001 equalization ratio of 91% with the 2002 ratio of 76.6%.) Thus, the estimated market value of \$240,000 appears reasonable and equates to an indicated assessed value of \$184,000 when equalized by the 2002 equalization ratio of 76.6% (.766).

Despite the Taxpayers agreeing to the .766 level of assessment for 2002, the Taxpayers also argued they were assessed at a higher level than that indicated by comparing assessed values to sales prices of the three comparables contained in the financing appraisal. The board finds such analysis is not appropriate as the court has ruled in Appeal of Andrews, 136 N.H. 61 (1992) that all properties within a taxing jurisdiction must be assessed at the same level of assessment.

The Taxpayers' requested assessment range of \$151,000 to \$175,000, if equalized by the .766 ratio, results in an indicated market value range of \$197,127 to \$228,460, significantly lower than the market value estimate contained in the financing appraisal. On the other hand, the board finds the City's revised assessment-record card values the third floor as unfinished space, is a reasonable assessment for the Property in 2002, is supported by equalizing the financing appraisal, and relies upon the consistent methodology established at the time of the 2001 reassessment. Consequently, we find the Taxpayers failed in their burden of showing the City's recommended assessment of \$184,000 was disproportionate.

If the taxes have been paid, the amount paid on the value in excess of \$184,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the City undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the City shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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(f). 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

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: David and Claudette Dube, 88 Cartier Street, Manchester, New Hampshire 03102, Taxpayers; and Chairman, Board of Assessors, City of Manchester, One City Hall Plaza-West Wing, Manchester, New Hampshire 03101.

Date: May 27, 2005

Anne M. Stelmach, Clerk