

**Richard S. and Kathleen M. Boduch**

**v.**

**City of Portsmouth**

**Docket No.: 22798-06PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “City’s” 2006 assessment of \$525,500 (building only) on Map 107/Lot 46-305, a residential condominium at 159 State Street (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) unwelcome and excessive noise can be heard stemming from the bars in this downtown neighborhood;

- (2) the Property is on the fourth floor (penthouse) of a renovated 1827 brick building and has “knee walls” because of a pitched roof that reduces the actual effective size substantially below what is shown on the architectural plans and the City’s original assessment (1,800 square feet);
- (3) when the City inspected the Property, it made certain “add on” notations that were not on the original assessment-record card; and
- (4) several other comparable properties paid lower taxes and had lower assessments.

The City argued the assessment was proper because:

- (1) despite the noise factor mentioned by the Taxpayers, the neighborhood is still attractive to buyers and developers continue to renovate and sell this type of housing successfully;
- (2) prior to the appeal, the City inspected the Property and measured and reduced the square footage measurements (to 1,614 square feet) and abated the assessment by about \$25,000 (from \$550,330) to take into account the functional obsolescence caused by the low knee walls;
- (3) the City had no prior knowledge of certain other features (such as a gas fireplace and a separate bath and shower) and discovered these so-called “add ons” only after it inspected the Property in response to the abatement request; and
- (4) the City’s comparables and market analysis demonstrate the Property is not disproportionately assessed and no further abatement is warranted.

The City represented the level of assessment was 89.6% for tax year 2006, as measured by the median ratio computed by the department of revenue administration. The Taxpayers did not dispute this representation of the level of assessment.

**Board's Rulings**

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed. The appeal is therefore denied.

Assessments must be based on market value. See RSA 75:1. The Taxpayers purchased the Property in June, 2006, approximately two months after the assessment date, and paid \$620,000. The Taxpayers did not claim they had overpaid for the Property or that the noise or square footage issues they mention in support of an abatement (discussed further below) reduced its market value below the sale price of \$620,000. In general, the arms-length sale price paid is “one of the best indicators” of the property’s value. Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988), quoting from Poorvu v. City of Nashua, 118 N.H. 632, 633 (1978). Applying the level of assessment to the sale price indicates the Property is not overassessed and in fact may be underassessed ( $\$620,000 \times 89.6\% = \$555,000$  (rounded) compared to assessment under appeal of \$525,500).

The focus of a tax abatement appeal must be on proportionality, requiring a review of the assessment to determine whether the Property is assessed at a higher level in relation to its market value than the level generally prevailing in the municipality. See Appeal of Andrews, 136 N.H. 61, 64 (1992); and Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985). There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality’s general level of assessment, represents a reasonable measure of one’s tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

The City’s comparables also support the proportionality of the assessment. As part of its Prehearing Statement (Municipality Exhibit A), the City submitted a spreadsheet of ten similar residential condominium units which it considered before concluding the Property’s assessment

should not be abated further. Among other things, this spreadsheet shows a wide range of prices for residential condominiums and that the Property is assessed at a lower price per square foot than others, including several units in the same building. In contrast, and as the City noted at the hearing, the Taxpayers' property comparisons are in different neighborhoods and/or involve mixed residential/commercial uses which are not useful because they attract buyers in different market segments.

The Taxpayers' attempt to compare their own assessment to several others at other locations in the City is not probative. The possible underassessment of other properties does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987). The courts have held that in measuring tax burden, market value is the proper yardstick to determine proportionality, not just comparing one assessment to a few others. Id.

The board noted the detailed testimony presented by one of the Taxpayers, Richard Boduch, regarding the downtown noise and knee walls (reducing the effective square footage) as features that should reduce the assessment on the Property. While these features associated with the Property may not be optimal, how the market perceives the "bundle of rights" associated with the Property relative to other properties is dependent on a host of subjective, as well as objective, factors and may or may not be the same as how any individual, such as the Taxpayers, view those rights. For example, some buyers wish to live in a downtown, urban setting and are therefore willing to accept the additional noise that may accompany that location during certain hours (because of the proximity of bars and restaurants) while others desire to live by the water (ocean or lake) and tolerate the additional traffic associated with it during other hours (when the public visits these areas in large numbers).

As to the square footage issue, the Taxpayers failed to present any market evidence regarding how the arguably lower effective area (because of the knee walls) impacted the market value of the Property. The Property is the “penthouse” in a renovated 1827 brick building, which adds to its desirability to certain buyers seeking the charm of living in a historical structure. The Taxpayers did not present any market value evidence to demonstrate how the existence of knee walls because of the roof pitch for this type of historic building would lower the Property’s market value. The Taxpayers did not claim they were unaware of this physical feature when they purchased the Property and did not argue, as noted above, that they overpaid for it. After receiving the abatement request, the City did inspect the Property and reduced the assessment based on a revision of the square footage measurement and also noting features that were not known prior to the inspection. The City did not err in correcting the assessment-record card to reflect more accurate information about the Property.

For all of these reasons, the appeal is denied.

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(g). 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.

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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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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Richard S. and Kathleen M. Boduch, 159 State St. #5, Portsmouth, NH 03801, Taxpayers; and Chairman, Board of Assessors, City of Portsmouth, 1 Junkins Avenue, Portsmouth, NH 03801.

Date: October 14, 2008

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Anne M. Stelmach, Clerk