

F&A, LLC

v.

City of Concord

Docket No.: 23454-07PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2007 total assessment of \$1,374,500 on nineteen (19) garden-style, one bedroom condominiums (listed below) located at 12 East Side Drive (the “Property”).

<u>Map/Lot</u>	<u>Bldg./Unit</u>	<u>Assessment</u>
114K 1/19	1/19	\$72,300
114K 1/20	1/20	\$72,300
114K 1/21	1/21	\$72,300
114K 1/22	1/22	\$72,300
114K 1/36	2/12	\$72,400
114K 1/37	2/13	\$72,400
114K 1/38	2/14	\$72,400
114K 1/43	2/19	\$72,300
114K 1/45	2/21	\$72,300
114K 1/60	3/12	\$72,400
114K 1/61	3/13	\$72,400
114K 1/83	4/11	\$72,400
114K 1/84	4/12	\$72,400
114K 1/85	4/13	\$72,400
114K 1/86	4/14	\$72,400
114K 1/91	4/19	\$72,300
114K 1/92	4/20	\$72,300
114K 1/93	4/21	\$72,300
114K 1/102	1/6	\$72,200

The Taxpayer also owns but did not appeal four other units with a total assessed value of \$290,700. For the reasons stated below, the appeal for abatement is denied.

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, 138 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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) a very similar condominium [(Building 1, Unit 5) also identified in the City Assessing Office records as Map 114k, Block 1, Lot 101] sold in January 2007;
- (2) the listed contract price was \$72,000, however, because the seller (the Taxpayer in this instance) agreed to return 3% of the listed contract price to the buyer (listed as "Seller Paid Closing Costs" on the settlement statement provided by the Taxpayer), the effective purchase price was \$69,840;
- (3) the effective purchase price of that unit should be the basis for the assessments on the Taxpayer's other similar units, not the listed contract price; and
- (4) the assessments for each unit should be \$69,840.

The City argued the assessment was proper because:

- (1) the City's assessments are based on a review of sales of similar properties which occurred between April 1, 2006 and May 31, 2007;
- (2) the department of revenue administration's (the "DRA") PA-34 Form completed by the purchasers of the Taxpayer's Building 1, Unit 5 condominium listed the selling price as \$72,000

and indicated they considered “the selling price to be fair market value” (line #5 on the PA-34 Form); further, the transfer stamps on the copy of the deed received by the City from the Merrimack County Registry of Deeds indicated the transfer price was \$72,000;

(3) the Taxpayer did not provide any evidence of the market value of the Property;

(4) the City prepared three analyses of comparable sales of units in the complex, one for the first floor units, one for the second floor units and one for the third floor units; these analyses indicated a market value per unit of \$73,000 which when adjusted by the 2007 equalization ratio of 98.6% support an assessed value of \$72,000 per unit; and

(5) the City of Concord’s Motion To Deny F&A, LLC’s Appeal of the City of Concord’s Property Tax Assessment of F&A, LLC’s Properties (the “Motion”) should be granted.

Neither party challenged the median assessment ratio of 98.6% as determined by the DRA.

Board’s Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed.

The foundation for taxation in New Hampshire is found in Part I, Article 12 and Part II, Article 5 of the New Hampshire Constitution that require every member of society to contribute their share in support of government and that taxes levied to do so must be “proportional and reasonable.” Further, RSA 75:1 establishes the basis for achieving proportional assessment is market value. Consequently, for taxpayers to carry their burden, they must present market value evidence to support their claim of disproportionate/overassessment.

There is never one exact or precise 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). Further, "[t]he demand of constitutional equality in taxation anticipates some practical inequalities." City of Berlin v. County of Coos, 146 N.H. 90, 94, 767 A.2d 441, 444 (2001). "Absolute mathematical equality is not obtainable in all respects if taxation is to be administered in a practical way." Id. (quotation omitted). Sirrell v. State, 146 N.H. 364, 370 (2001).

All assessments are based on estimates of a property's market value. By definition an "estimate" is not an absolute determination but rather one that involves human opinion of judgment. Further, sale prices, which stand as proxies for market value, are transactions between people with varying motivations. Thus an estimate of market value based on sales data involves various elements of human subjectivity and will rarely result in only one absolute value. In this case, the Taxpayer submitted a purchase and sale agreement for one sale, a one bedroom condominium (Building 1, Unit 5) dated January 12, 2007, wherein the seller, F&A, LLC, was motivated to contribute 3% (\$2,160) of the purchase price of \$72,000 at the closing. The Taxpayer argued this type of concession was common practice, and upon notice to the City of this agreement, the City should have reduced the assessments of all the Property's one bedroom units based on a market value of \$69,840. The board disagrees. It is not common practice for municipalities to review purchase and sale agreements when reviewing sales of properties for purposes of assessment. When transfers are recorded in the registry of deeds, copies of the deeds are forwarded to the municipality where the property is located. This information is used by the municipality and the sales data is further confirmed by the PA-34 Form, the DRA's inventory of property transfer form which is completed by buyers of properties at the time of closing. In this case, the purchaser of Building 1, Unit 5 signed the PA-34 Form and indicated the sale price of

\$72,000 was considered to be “fair market value” of the property. The concession made by the seller may or may not be common practice; however, the price paid for the property, the transfer taxes paid on the sale of the Property, the deed recorded at the registry of deeds and the PA-34 Form all support a sale price for that one unit of \$72,000.

The City analyzed sales of condominium units at 12 East Side Drive which indicated median sale prices of \$73,000 in 2006 and \$74,000 in 2007. Further, the City reviewed three comparable sales for first floor, second floor and third floor units at 12 East Side Drive, which included Building 1, Unit 5. These three analyses indicated adjusted sale prices of \$73,000 each. This evidence supports the proportionality of the Property’s one bedroom units under appeal. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

“In an abatement case, the Taxpayer has the burden of proving by a preponderance of the evidence that the Property at issue was assessed disproportionately to other property in the Town.” The City’s evidence of sales of comparable units in the same complex supports the proportionality of the assessments of the Property. Appeal of Sokolow, 137 N.H. 642, 643 (1993). Even if the board were to accept the Taxpayer’s assertion of market value, which it does not, the board finds the City’s per unit assessment and the Taxpayers’ unit evidence are of such nominal difference that for all practical purposes proportionality has been achieved. Therefore, having found the Taxpayer has failed to prove the Property was disproportionately assessed, the board grants the Motion and denies the appeal.

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. 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: F&A, LLC, c/o J. Stephen Agel, 485 Forest Road, Wolfeboro, NH 03894, Taxpayer; and Chairman, Board of Assessors, City of Concord, 41 Green Street, Concord, NH 03301.

Date: February 4, 2010

Anne M. Stelmach, Clerk