**Gary Lowe**

**v.**

**City of Portsmouth**

**Docket No.: 25453-10PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 2010 assessment of $394,200 (land $240,700; building $153,500) on Map 110/Lot 11, a two-family home located at 105 South Street on 0.18 acres (the "Property"). 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) five "comparable properties" used in the City's revaluation which occurred between April 2008 and April 2010 indicated a mean value of $387,400, $19,500 less than the assessed value of the Property (Taxpayer Exhibit No. 1);

(2) ten other comparables not used by the City in the revaluation (from March 2010 through September 2010) indicated a mean value of $348,350, $58,550 less than the assessed value of the Property (Taxpayer Exhibit No. 1);

(3) in September 2010, the Taxpayer met with then assessor, Gordon Oakes, who indicated he did not realize the Property was a two-family and admitted it was a challenging property to assess as there were few comparables, 90% of the homes around the Property were of better quality and Mr. Oakes reduced the previous assessment of $406,900 to its current assessment;

(4) the house has asbestos siding, has never been remodeled and has no new wiring or insulation;

(5) 14 Mt. Vernon Street which sold for $199,700 on June 1, 2010 is the most comparable to the Property; the buyer, Ian Moody, a general contractor, by letter dated April 16, 2013 (Taxpayer Exhibit No. 1 at page 2) acknowledged his property had a similar floor plan and was comparable to the Property; and

(6) the market value of the Property as of April 1, 2010 is $348,350.

The City argued the assessment was proper because:

(1) the Property is a two-family dwelling located in the City's historic South End in a neighborhood favored by the market and is within close proximity to Market Square, Strawberry Banke and various destination and popular recreation areas;

(2) the City's sales' analysis (completed for the 2010 revaluation) included comparables which sold between April 1, 2008 and April 30, 2011, a longer than typical period due to the limited number of sales in the City;

(3) a comparison of five two-family sales was analyzed and supports the assessment of the Property (Municipality Exhibit A); in fact, it indicates the Property is underassessed;

(4) of the five sales analyzed, 279 Richards Avenue, which sold on August 29, 2008 for $455,000 is the most comparable to the Property;

(5) 14 Mt. Vernon Street was not comparable to the Property at the time of sale as the purchaser was a developer, tore down the improvements and the $199,700 sale price was for the land value; and

(6) the appeal should be denied.

The parties agreed the level of assessment was 98.1% in tax year 2010, the median ratio calculated by the department of revenue administration.

**Board's Rulings**

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

Assessments must be based on market value, as prescribed in RSA 75:1. Proportionality is determined by focusing on market value adjusted by the level of assessment in the City. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003).); see also Appeal of Net Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

To determine whether the Taxpayer has met its burden of proving disproportionality, the board considers and weighs all of the evidence presented, utilizing its "experience, technical competence and specialized knowledge." See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its "experience, technical competence and specialized knowledge in evaluating the evidence before it.") Further, "judgment is the touchstone." See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from

New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. at 68 ; see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

The Taxpayer asked the board to compare the comparables used in the 2010 revaluation along with ten comparables not used by the City. He asserted the mean values of the comparables supported his contention the Property was overassessed. Averaging sales, as done by the Taxpayer, is not a conclusive method of establishing market value since averaging ignores the unique characteristics of properties. Rather, analyzing, comparing and weighing sales data and then correlating the most pertinent aspects of the sales to the Property arrives at the best indication of market value.

The board has considered the submission (Taxpayer Exhibit No. 1) and both the Taxpayer's and the City's testimony relative to 14 Mt. Vernon Road and finds the evidence supports the City's testimony the sale price represented the market value of a vacant lot.

In summary, the board finds the City presented a credible analysis that enabled it to conclude the assessment was reasonable. Therefore, the appeal for abatement is denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") 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 t 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

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Michele E. LeBrun, Chair

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Theresa M. Walker, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Gary Lowe, 105 South Street, Portsmouth, NH 03801, Taxpayer; and Chairman, Board of Assessors, City of Portsmouth, 1 Junkins Avenue, Portsmouth, NH 03801.

Date: 5/30/13

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Anne M. Stelmach, Clerk