

Shirley A. Guinard

v.

City of Concord

Docket No.: 8685-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1990 assessments of:

\$119,600 (land \$54,500; buildings \$65,100) on a 6,400 square-foot lot with a gas station (Texaco Lot);

\$118,300 (land \$35,800; buildings \$82,500) on a 16,800 square-foot lot with a single-family house (Pine Street Lot);

\$21,200 on a vacant 9,583 square-foot lot (East Street Lot); and

\$21,500 on a vacant 3,250 square-foot lot (the Sanders Street Lot).

For the reasons stated below, the appeals for abatements are denied.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to prove disproportionality.

Page 2

Guinard v. City of Concord

Docket No.: 08685-90PX

The Taxpayer argued the assessment on the Texaco Lot was excessive because:

- (1) in March 1990, the gas tanks were ordered shut off by the state because the state wanted the tanks replaced;
- (2) in June 1990, the tanks were pulled and leakage was found;
- (3) new in-ground tanks could not be replaced due to ledge and new regulations and a new above-ground tank facility had to be built (Spring 1991);
- (4) the station was closed from March 1990-June 1991 while the tank issue was addressed; and
- (5) the total cost of removing the underground tanks and installing the above-ground tanks was approximately \$200,000.

The Taxpayer argued the assessment on the East Street Lot was excessive because the lot was only used as a parking lot.

The Taxpayer argued the assessment on the Sanders Street Lot was excessive because:

- (1) the lot was sloped and cannot be built on; and
- (2) the lot was used for the tank storage (as of June 1991).

The Taxpayer stated the Texaco, East Street and Sanders Street Lots have an integrated use and would be marketed and sold as one lot. The Taxpayer also described several deficiencies with the lots for use as a service station. The Taxpayer estimated the lots would sell for \$130,000, but there was doubt about whether any one could obtain a loan given the tank situation.

Page 3

Guinard v. City of Concord

Docket No.: 08685-90PX

The Taxpayer argued the assessment on the Pine Street Lot was excessive because:

- (1) the assessment should have been around the mid \$80,000 to low \$90,000's;
- (2) the property is contaminated with asbestos--exterior siding and interior insulation; and
- (3) the asbestos cannot be removed without complying with extensive regulations.

The City argued the assessment on the Texaco, Sanders Street and East Street Lots were proper because:

- (1) following a meeting with the revaluation company, at which the Taxpayer raised the contamination and tank issues, the assessment was reduced from \$260,000 to \$119,600; and
- (2) they were supported by the analysis submitted to the board.

The City argued the assessment on the Pine Street Lot was proper because:

- (1) no reduction was warranted for the asbestos because such properties have been bought and sold without observed reduction; and
- (2) the City was unaware of a prohibition on the covering of the asbestos and the insulation is contained by walls.

Board's Rulings

Concerning the Texaco, Sanders Street and East Street Lots, we find the Taxpayer failed to carry her burden for the following reasons:

- (1) the Taxpayer failed to produce any market data concerning the properties'

Page 4

Guinard v. City of Concord

Docket No.: 08685-90PX

value (see paragraph below);

Page 5

Guinard v. City of Concord

Docket No.: 08685-90PX

- (2) the City drastically reduced the assessment when it learned of the tank and contamination situation from \$260,000 to \$119,600; and
- (3) the board must focus on April 1, 1990, and the full extent of the problems at the properties were not known until after April 1, 1990.

Concerning the Pine Street Lot, we find the Taxpayer failed to carry her burden for the following reasons:

- (1) the Taxpayer did not present any data concerning the property's market value (see paragraph below); and
- (2) the City testified there was no observed depreciation for properties with asbestos siding.

The Taxpayer did not present any credible evidence of the properties' fair market values. To carry this burden, the Taxpayer should have made a showing of the properties' fair market values. These values would then have been compared to the properties' assessments and the level of assessments generally in the City. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

We find the Taxpayer failed to prove the properties' assessments were disproportional. We also find the City supported the properties' assessments.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) 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

Page 6

Guinard v. City of Concord

Docket No.: 08685-90PX

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 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Shirley A. Guinard, Taxpayer; and Chairman, Board of Assessors, City of Concord.

Dated: February 22, 1994

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Valerie B. Lanigan, Clerk