

Anderson and Noreen S. Bowers, III

v.

City of Dover

Docket Nos.: 9654-90PT and 12459-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1990 and 1991 assessment of \$126,800 (land \$14,000; buildings \$112,800) on a 5.3-acre lot with a colonial home (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers failed to carry their burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the house is graded higher than other old brick houses in the City;
- (2) the house was built by the City and does not have the better architectural features of comparable properties;
- (3) the house was purchased in June, 1989 for \$325,000 at the height of the real estate market and in 1990 and 1991, real estate values had plummeted;
- (4) real estate values have dropped 30-40% from 1989 to present; and

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(5) the fair market value in 1990 and 1991 was approximately \$210,000.

The City argued the assessment was proper because:

(1) the Property was purchased for \$325,000 in 1989; the equalization ratio suggests a decrease of 7% in market value from 1989 to 1990 and 9% from 1990 to 1991

which indicates that the assessment is equitable; and

(2) the Property is not just a single family residence but is also a bed and breakfast.

Board's Rulings

Based on the evidence, we find the failed to prove the Property's assessment was disproportional.

The board does not agree with the Taxpayers' argument that the grade of the subject Property by being higher than other architecturally superior properties is evidence of disproportionality for the following reasons:

(1) as the City stated, the Taxpayers' comparison was of the exterior of the buildings, and it is possible that the grading components of the comparables reflected inferior interiors either as to their original construction or lack of renovations;

(2) even if the comparable properties were disproportionately graded as to their building component, the board views the value on the Property as a whole (land and buildings); and

(3) further, it is conceivable that the comparable properties may have been underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment

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because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., Id.

The Taxpayers proffered that the Property had a market value of approximately \$210,000 as of April 1, 1990 and 1991. The board does not find the Taxpayers' testimony convincing because:

- (1) the Taxpayers purchased the Property in June of 1989 for \$325,000;
- (2) the only substantiated evidence of the decline in market value from early 1989 to 1990 and 1991 was the cumulative 16% as indicated by the changes in the City-wide equalization ratios;
- (3) no evidence was submitted by the Taxpayers to support their claim that higher priced properties have declined at a faster rate than all other properties generally within the City;
- (4) the Property description indicates there are favorable market aspects of the Property (eg. in addition to being a single family residence, the Property is operated as a bed and breakfast; and the five acres is mostly open fields providing a view and leading down to frontage on the Cochecho River); and
- (5) the Property, while not containing significant architectural features may have some historical value and attractiveness by being the former Almshouse (poor farm) of the City, built in the 1850s.

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In short, other than the sales purchase price in 1989, the Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment 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.

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 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

Paul B. Franklin, Member

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Anderson and Noreen S. Bowers, III, Taxpayers; and Chairman, Board of Assessors, City of Dover.

Dated: June 9, 1994

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Valerie B. Lanigan, Clerk