

John R. and Nancy L. Downs

v.

City of Rochester

Docket No.: 11480-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1991 assessment of \$44,400 (land \$7,900; buildings \$36,500) on a 2.46-acre lot with a mobile home and a single-family house under construction (the Property). The Taxpayers and the City waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. 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 prove the assessment was disproportionate.

The Taxpayers argued the assessment was excessive because:

(1) the mobile home was only on the Property until July 25, 1991, and the newly constructed home could not be occupied until July, 1991; therefore a

Page 2

Downs v. City of Rochester

Docket No.: 11480-91PT

proration of the mobile home taxes would be appropriate pursuant to RSA 72:7-a; and

(2) the land is wet and swampy and contains a cemetery.

The City argued the assessment was proper because the mobile home was not removed from the Property until July 19, 1991 and the assessment was fair and legal.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property's assessment was disproportionate.

The applicable statute for assessing the Taxpayers' mobile home is RSA 72:7-a I:

"I. Manufactured housing suitable for use for domestic, commercial or industrial purposes is taxable in the town in which it is located on April 1 in any year if it was brought into the state on or before April 1 and remains here after June 15 in any year; except that manufactured housing as determined by the commissioner of revenue administration, registered in this state for touring or pleasure and not remaining in any one town, city or unincorporated place for more than 45 days, except for storage only, shall be exempt from taxation. This paragraph shall not apply to manufactured housing held for sale or storage by an agent or dealer."

The Taxpayers' mobile home was located on the Property prior to April 1, 1991 and remained there until after June 15, 1991. Therefore, according to RSA 72:7-a I, the mobile home is taxable for the entire year. Further, under RSA 80:2-a, an owner selling their mobile home after April 1 must provide the person relocating the unit with a receipted tax bill to be provided to the ultimate purchaser of the unit. It appears from a complete reading of the

Page 3

Downs v. City of Rochester

Docket No.: 11480-91PT

statutes related to taxation of manufactured housing, the intent was to avoid double taxation of manufactured housing by two different towns. Further, there is a requirement that proof of payment of taxes be a part of the relocation of the manufactured housing. Therefore, it is conceivable that one of the factors affecting the consideration at the time of the sale is the previous payment of taxes by the seller and the avoidance of property taxes for that year by the purchaser.

In this case, while the Taxpayers are liable for the full 1991 manufactured home's taxes, such proof of payment could have been a factor in increasing the sale price of the mobile home.

The board also considered whether the entire assessment of \$44,400 appeared reasonable for the land, house and mobile home. The board finds that the assessment is reasonable. The 1991 equalization ratio as determined by the department of revenue administration for the City of Rochester was 58%. Applying that equalization ratio to the \$44,400 assessment provides an indication of market value of \$76,550 ($\$44,400 \div .58$). Based on the photographs and listing of the property-record cards, such estimate of market value seems, if anything, conservative.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A

Page 4

Downs v. City of Rochester

Docket No.: 11480-91PT

reconsideration 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(e). Filing a reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John R. and Nancy L. Downs, Taxpayers; and Chairman, Board of Assessors, City of Rochester.

Dated: June 30, 1994

Lynn M. Wheeler, Deputy Clerk

0008