

Franklin B. and Dorothy Fillmore

v.

Town of New Boston

Docket No.: 11684-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of: \$150,600 on Map 014, Lot 44 (Lot 44); and \$145,900 on Map 011, Lot 032-01 (Lot 32-1) on two duplexes (collectively the "Properties"). The Town recommended adjusted assessments of \$138,000 on Lot 44 and of \$130,800 on Lot 32-1. The Town had previously sent an abatement check, but the Taxpayers rejected the check. For the reasons stated below, we find the Town's recommended assessments to be the proper assessments.

The Taxpayers have the burden of showing the assessments were 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 this burden, but we adopt the Town's recommended assessments.

The Taxpayers argued the assessments were excessive because:

- (1) similar properties were assessed differently;
- (2) they were higher than the assessments on certain comparables (the Jade Realty properties);

- (3) no sales occurred in the Town or the surrounding area; and
- (4) a May 1993 appraisal estimated \$92,000 for the 255 Mount Vernon property.

The Town argued the recommended assessments were proper because:

- (1) they were consistent with comparable sales of duplexes in Manchester and Weare;
- (2) they were recalculated using the same methodology that was used in the Town and for similar duplexes, e.g., Jade Realty properties;
- (3) the Taxpayers' comparables were not good sales; and
- (4) they were supported by the use of a 92 gross-rent multiplier.

The Town also asked the board to order the Taxpayers to pay the Town's costs in defending the appeals.

Board's Rulings

Based on the evidence, we find the correct assessments should be the assessments the Town recommended: \$138,000 on Lot 44 and \$130,800 on Lot 32-1.

In their abatement request to the Town and their appeal to this board, the Taxpayers argued the assessments were incorrectly calculated. The Taxpayers asked the Town to recalculate the assessments, using the same calculations that the Town used on comparable properties. The Town did this, but the Taxpayers persisted, seeking even lower assessments.

Errors in calculating assessments should be corrected, but ultimately, assessments must be based on market value. RSA 75:1. To challenge the assessments, the Taxpayers should have made a showing of the Properties' fair market value. These values would then have been compared to the Properties'

assessments and the general level of assessments in the Town. 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.

The general level of assessment was shown by the revenue department's 1.19 equalization ratio. Thus, to show overassessment, the Taxpayers needed to prove Lot 44 was worth less than \$115,970 and Lot 32-1 was worth less than \$109,920. These values are the equalized assessments ($\$138,000 \div 1.19$) ($\$130,800 \div 1.19$). In deciding this issue, the board reviews all of the evidence from both parties. Based on that review, we find the Taxpayers did not show overassessment for the following reasons.

(1) The equalized assessments were consistent with the sales of other duplexes and the gross-rent multiplier (GRM). Even the Taxpayers, in their agent's July 14, 1995 letter to the Town, admitted the evidence (sales and GRM) demonstrated a value between \$100,000 and \$120,000. The Taxpayers' final conclusion of \$100,000 was not completely explained. Specifically, the agent did not make adjustments for the individual properties to reflect differences in lot size, building size or other improvements.

(2) The board did not accept the value conclusion in the 1993 appraisal on 255 Mount Vernon Way for several reasons. The date was two years after the 1991 assessment date. The board did not receive the complete report. There was other sufficient evidence to base a value conclusion.

(3) The Taxpayers did not begin to focus on market value until requested to by the Town.

(4) The Town's evidence supported the equalized values.

(5) The Town testified the Properties' assessments were arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality, see Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

Costs

The board is authorized to award costs as in the superior court. RSA 71-B:9; TAX 201.39. Costs are awarded where an appeal is frivolously filed or maintained. We find the Taxpayers appeal was frivolously maintained. The original appeal only stated that the Town had erred in calculating the assessments. Once this was corrected and a refund check mailed, the Taxpayers changed their tack and decided to argue (for the first time) value. Quite frankly, value should have always been the issue. The problem is the value analysis was done late, and as discussed above, such analysis showed the equalized assessments were fair. One additional factor sways the board. The Taxpayers were represented by a paid agent who should have known that to continue the case was frivolous once the Town had granted the abatements based on the asserted basis for the appeal--error in calculation. Additionally, even the Taxpayers' agent's analysis of the value information showed the equalized (recommended) assessments were consistent with the market evidence.

The Town's agent testified his hourly rate was \$60. We have allowed one hour and a half for travelling to and attending the two hearings that were consolidated. Thus, the Taxpayers here shall, within 30 days of the clerk's date below, pay the Town \$45 for costs.

Refund

If the taxes have been paid, the amount paid on the value in excess of \$138,000 on Lot 44 and \$130,800 on Lot 32-1 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Here, the refund date shall be the date the Town sent the first refund check to the Taxpayers, which the Taxpayers returned. We see no reason for the Town to pay interest for anytime after the refund check was sent. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992 and 1993. The Town underwent a general reassessment in 1994, and thus, the Town shall is not obligated to use the ordered assessment for subsequent years (years after 1993). See RSA 76:17-c I.

Rehearing and 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(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. 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to William S. Petch, Agent for Dorothy T. and Doris M. Fillmore, Taxpayers; George Hildum as Agent for the Town of New Boston; and Chairman, Selectmen of New Boston.

Dated: August 30, 1995

Valerie B. Lanigan, Clerk

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