

Norman D. Butts & Sherry L. Pyle

v.

City of Concord

Docket No.: 12281-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1991 assessment of \$138,500 (land \$41,500; buildings \$97,000) on a garrison-style colonial home on a 12,500 square-foot lot (the Property). For the reasons stated below, the appeal for abatement is granted.

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 met their burden of proof.

The Taxpayers argued the assessment was excessive because:

- (1) the Property was purchased in May 1990 for \$114,952;
- (2) seven other garrison homes sold in the first half of 1990 in the same development with the average sale price being \$114,946.
- (3) because the sales clearly indicate the assessment is excessive, the filing fee for the appeal should be refunded.

The City recommended an amended assessment:

(1) an appraisal prepared by the City estimated a market value as of April 1, 1991 of \$116,000 which if equalized results in a proper assessment of \$125,280. The City used a market value \$116,000 x 1.08 equalized ratio to arrive at an equalized market value of \$125,280 (\$125,300 rounded).

Board's Rulings

Based on the evidence, we find the correct assessment should be \$125,300.

This assessment is ordered because:

- 1) the City's appraisal estimated a market value of \$116,000; and
- 2) the Taxpayers' 8 comparable sales of garrison design houses in Governor's Woods subdivision supported the subject Property's purchase price (\$114,952) and the City's appraisal.

The board denies the Taxpayers' motion for a board ordered refund of the \$65 filing fee. No clerical error or clear error of fact was shown by the Taxpayers to support this motion. The difference of opinion between the parties was strictly based on an interpretation of the market. (see RSA 76:17-b).

If the taxes have been paid, the amount paid on the value in excess of \$125,300 shall be refunded with interest at six percent per annum from date paid to refund date.

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

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

George Twigg, III, Chairman

Paul B. Franklin, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Norman D. Butts and Sherry L. Pyle, Taxpayers; and Chairman, Board of Assessors of Concord.

Dated: April 19, 1995

Valerie B. Lanigan, Clerk