

James A. & Phyllis Kaplan

v.

City of Concord

Docket No.: 12560-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1991 assessment of \$326,900 (land \$81,200; buildings \$245,700) consisting of a two-story home on a 35,592 square foot lot (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 prove the Property was disproportionately assessed.

The Taxpayers argued the assessment was excessive because:

- (1) the lot is assessed higher than an abutting vacant building lot assessed in the low \$60,000's; and
- (2) a November, 1992 appraisal estimated the value to be \$296,000.

The City argued the assessment was proper because:

- (1) the abutting lot (32 Dwinnell Drive) was given a 10% adjustment because it was vacant and an additional 10% adjustment for marketing time;

- (2) the fair market value as of April, 1991 was \$305,000 based on comparable sales;
and
(3) adjusting the Taxpayers' appraisal by the equalization ratios indicates the assessment is fair and proportionate.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the assessment was disproportional. Further, the board finds the City supported the assessment.

The Taxpayers appraisal estimated a fair market value of \$296,000 as of November, 1992. The date of assessment is April 1, 1991. The board has trended the appraisal to the April 1991 date by using the equalization ratios as determined by the department of revenue administration. The ratios indicated a time adjustment of -10% from 1991 to 1992 or an estimate of value of \$325,600 as of April 1991 ($\$296,000 \times 1.10$). The City's equalized assessment was \$302,685 ($\$326,900 \div 1.08$ 1991 ratio) which is less than the Taxpayers trended appraisal report. Further, the City used three comparables sales in estimating a fair market value of the Property as of April 1991 and determined that value to be \$305,000. This analysis also supported the assessment.

The Taxpayers argued that the lot value was high when compared to their abutter's vacant lot. The board finds the City adequately explained the basis for the assessment of the abutting lot. Vacant lots typically sell for less than improved lots and adjustments are made to reflect the fact that they are unimproved and require marketing time. Further, in making a decision on value, the board looks at the

buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The board finds both the City's appraisal and the Taxpayers appraisal as adjusted support the assessment.

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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Edmund J. Waters, Jr., Esq., counsel for the Taxpayers; and Chairman, Board of Assessors of Concord.

Dated: July 6, 1995

Valerie B. Lanigan, Clerk

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