Peter and Diana Borgo

v.

Town of Wakefield

Docket No.: 12759-92-PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of $352,600 (land, $245,100; buildings, $107,500) on a .7-acre lot with a house (the Property). The Taxpayers and the Town 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 carry this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the Town ignored the board's June 1, 1992 decision, wherein the board ordered a $313,400 assessment; and

(2) an April 1, 1988 appraisal estimated a $301,000 value.

The Town argued the assessment was proper because:

(1) the land assessment was consistent with the board's June 1, 1992 decision; and

(2) the building value increased when the construction depreciation was reduced to 5%.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not prove overassessment.

First, the board disagrees that the Town did not comply with the board's earlier decision. The Town did comply with the board's earlier decision. The Town, however, adjusted the unfinished factor on the building because the Taxpayers had done additional work to the building. This was totally appropriate, and it would have been in violation of New Hampshire law for the Town not to have done so. Therefore, the board finds no basis for an abatement on this ground.

The only other evidence submitted by the Taxpayer was a $301,000 1988 appraisal. First, we note the Property's equalized value was only $277,640. This value was calculated by dividing the assessment by the department of revenue's equalization ratio. This calculation provides a rough approximation of the Property's 1992 value. Secondly, the 1988 appraisal was too remote in time to be relied upon in establishing a 1992 value.

For the reasons stated above, the appeal is denied. Furthermore, the

board denies the Taxpayers' request for costs.

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 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

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this

date, postage prepaid, to Peter and Diana Borgo, Taxpayers; and the Chairman, Selectmen of Wakefield.

Dated: December 23, 1994

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Lynn M. Wheeler, Deputy Clerk