

B.C.P. Realty

v.

Town of Durham

Docket No.: 12839-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$500,400 (land \$231,300; buildings \$269,100) on a 5,674 square-foot lot with a building containing a convenience store and 10 student-housing apartments (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

- (1) based on a comparison sheet with analysis, the Property was assessed at higher rates for certain units of comparison, e.g., per-square-foot of building and land, than were other properties;
- (2) there was no parity of assessments on Main Street, especially the land assessments; and

(3) the RFM property sold December 1993 for \$220,000.

The Town argued the assessment was proper because:

- (1) the Property is located in the central-business district of a campus town, which assures good rental histories;
- (2) the Property was assessed based on its intense use of the land;
- (3) the methodology used to assess the Property's land was consistently used in this district; and
- (4) a review of the comparables' building assessments and the Property's building assessment demonstrated consistent assessments.

Board's Rulings

Based on the evidence, the Taxpayer failed to show overassessment.

The Taxpayer focused on the land assessment and the Town's methodology in assessing the land. The proper focus must be on how the total assessment, however calculated, resulted in disproportionate assessment. If the total assessment was correct, no abatement is owed regardless of how the assessment was calculated. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

The board also disagrees with the Taxpayer's units of comparison. The Town's evidence showed on a per-unit basis the assessment was consistent with other assessments.

The Taxpayer should have made a showing of the Property's fair market value. This value would then have been compared to the Property's total assessment and the level of assessment generally 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 Town's equalization ratio in 1992 was 1.27. To show overassessment, the Taxpayer had to show the Property was worth less than \$394,015 (\$500,400 assessment ÷ 1.27 ratio). The Taxpayer did not do this. The Taxpayer admitted, however, the Property was worth at least the equalized value. The income stream also supported the equalized value.

The Town testified the Property's assessment was 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). The board had some concerns about the condition factor on the land being increased for the Property's third floor when other lots with the potential to add on were not assessed for that potential. Nonetheless, this question is minor compared to the countervailing issues discussed above.

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 Richard E. Clark, Agent for B.C.P. Realty, Taxpayer; George Hildum, Agent for the Town of Durham; and Chairman, Selectmen of Durham.

Dated: October 5, 1995

Valerie B. Lanigan, Clerk