

Reinhard Sarges

v.

City of Claremont

Docket No.: 12862-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1992 assessment of \$120,100 (land \$27,800; building \$92,300) on a 1.5-acre lot with a dwelling (the Property). The Taxpayer and the City 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 granted to the City's recommended assessment of \$115,500.

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).

The Taxpayer argued the assessment was excessive because:

- 1) of certain discrepancies when compared to a similar property (Vigneault), i.e., square-foot valuation, attic floor area, heat; and
- 2) deficiencies in the lot when compared to Vigneault's property, e.g., restricted view, narrow and steep lot requiring a pump-up septic system.

The City recommended an additional 5% functional obsolescence be applied to the assessment to address the wall height. The City argued the adjusted assessment was proper because:

- 1) the Property is superior to the neighboring property because it is a newly constructed home (1991) with better-than-average construction and many desirable characteristics; and
- 2) four sales, all located within one mile of the Property, support the Property's assessment.

Board Findings

Based on the evidence, the board finds the proper assessment to be \$115,500 (land \$27,800; buildings \$87,700) because the board agrees with the City that a 5% functional depreciation is appropriate for wall height on the second floor. The board finds no further adjustments are warranted for the following reasons.

- 1) The Taxpayer compared his home, constructed in 1991, to that of a home built in 1790. Comparing a recently built home to an older renovated home would require numerous adjustments, which cannot be made by the board with the limited information presented.
- 2) The Taxpayer built his home in 1991, yet indicated to the board that the cost to construct was not applicable (Board Questionnaire #2A). The board disagrees with the Taxpayer. This information is very pertinent and is a very good indication of the value of the Property.
- 3) The Taxpayer did not submit any sales of comparable properties to support overassessment and, thus, provided no credible evidence of the Property's fair

market value. To carry this burden, the Taxpayer should have made a showing

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of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the City. 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.

4) The City submitted evidence of four comparable sales, which indicate the revised assessment is proper.

5) Neither party challenged the Department of Revenue Administration's equalization ratio of 114% for the 1992 tax year for the City of Claremont. The revised assessment, when equalized by the ratio, indicates a fair market value of \$101,300, which the board finds is reasonable.

If the taxes have been paid, the amount paid on the value in excess of \$115,500 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the City shall also refund any overpayment for 1993. Until the City undergoes a general reassessment, the City shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 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

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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

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard Sarges, Taxpayer; and Chairman, Board of Assessors, City of Claremont.

Dated: January 17, 1995

Melanie J. Ekstrom, Deputy Clerk