Ellen M. Beckwith

v.

Town of Derry

Docket No.: 12951-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of $74,500 (land $15,000; buildings $59,500) on a condominium unit in the Sunview Condominiums (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer argued the assessment be abated because the Property was totally destroyed by fire, forcing the Taxpayer to vacate the building from May 18, 1992, to January 23, 1993. The eight-year-old building had to be torn down and completely rebuilt. The Taxpayer moved to Atkinson during the rebuilding and had no children in Town schools. The Taxpayer agreed she still owned something of value because she held the legal title to the Property, knowing the Property would be rebuilt within a reasonable time.

The Town argued the assessment should not be abated because the Town assesses all property as of April 1 of the tax year. The Town asserted the Town supplied the Taxpayer with services from April 1, including services relating to the fire. Additionally, town services continued to be available to the Taxpayer and others who lived in the building. Finally, the Town stated it

of sticking with the April 1 assessment date regardless of what occurs after April 1.

Board's Rulings

An argument can be made that municipalities and this board may abate taxes when a property is destroyed during the tax year, but the board concludes that justice does not require an abatement in this case. See RSA 76:16-a (board may order abatements as justice requires).

The statutory scheme for assessing establishes an April 1 assessment date. E.g., RSA 74:1 (annual list as of April 1). The Taxpayer's condominium unit was destroyed in May 1992, but the Town provided substantial services to the Taxpayer, including fire and police protection before the fire, during the fire and after the fire during reconstruction. Additionally, the Taxpayer was able to move back into the Property in January 1993. Even though the Taxpayer was not living in the Property or the Town, she still owned substantial real estate rights in the Property, including the right to rebuild the unit. Based on these facts and the April 1 assessment date, the board concludes justice does not require an abatement of taxes.

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

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

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Ellen M. Beckwith, Taxpayer; and Chairman, Board of Assessors, Town of Derry.

Dated:October 18, 1995

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Valerie B. Lanigan, Clerk