

Walter W. and Mary Fischer

v.

Town of Durham

Docket No.: 13732-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessments on the following nineteen properties.

Lot No.	Assessment	Property Description
1	\$ 19,400	vacant, 17,790 square-foot lot
2	\$ 209,500	15,625 square-foot lot with a house
3	\$ 219,100	21,600 square-foot lot with a house
4	\$ 210,600	18,260 square-foot lot with a house
5	\$ 213,200	22,400 square-foot lot with a house
6	\$ 217,000	15,049 square-foot lot with a house
7	\$ 214,100	19,410 square-foot lot with a house
8	\$ 206,800	21,475 square-foot lot with a house
9	\$ 51,100	15,288 square-foot lot with a house
10	\$ 51,400	16,728 square-foot lot with a house
11	\$ 44,800	vacant, 15,400 square-foot lot
12	\$ 44,700	vacant, 15,410 square-foot lot
13	\$ 46,100	vacant, 23,400 square-foot lot
14	\$ 46,900	vacant, 26,946 square-foot lot
15	\$ 44,900	vacant, 16,746 square-foot lot

16	\$ 197,600	19,600 square-foot lot with a house
17	\$ 200,400	16,000 square-foot lot with a house
18	\$ 51,000	vacant, 15,000 square-foot lot
47-0	\$ 15,700	vacant, 1.24-acre lot

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For the reasons stated below, the appeal for abatements is denied.

The Taxpayers have the burden of showing the assessments were 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 did not carry their burden.

The Taxpayers argued the assessments were excessive on the duplexes because:

- (1) the assessments did not reflect the age and condition of the buildings and other improvements compared to other properties (Coe Drive) that are superior to the duplexes and are individually owned condexes;
- (2) the buildings are 25-year-old student housing in somewhat poor condition; and
- (3) two October 1992 appraisals estimate a value of \$160,000 per duplex.

The Town argued the duplex assessments were proper because:

- (1) the time-adjusted appraisals supported the assessments when the total equalized assessments were compared to the total market values of the duplexes;
- (2) a review and comparison of a duplex with a Coe Drive condex demonstrated the Taxpayers' duplex assessments were correct and reflected the differences between the two properties; and
- (3) the duplexes were assessed using the same methodology as was used on similar properties and as used throughout the Town.

Board's Rulings

Based on the evidence, we find the Taxpayers did not show overassessment.

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The Taxpayers did not present sufficient information to show overassessment on the vacant parcels, and thus, the board denies the appeal for those lots. The remainder of this discussion addresses the duplexes.

For the following reasons, the Taxpayers did not show the duplexes were overassessed.

(1) The comparison to the Coe Drive properties did not show overassessment.

The duplexes and the Coe Drive properties have different uses -- one rental and one individual ownership. Thus, a value comparison should not be made. Furthermore, the Taxpayers did not show how any asserted inconsistencies resulted in the duplexes being overassessed. Finally, the Town showed that if a comparison was made, the assessments reflected the differences in the two properties.

(2) The Taxpayers' time-adjusted appraised values were within a few percentages of the equalized assessments.

(3) The board had some questions and concerns about the appraisal's income approach, including: a) whether the duplexes received any income for summer rentals or income from other sources, e.g., laundry or parking; b) why the appraiser did not include any repair expenses; c) what the actual vacancy and collection was; and d) the expensing the property taxes rather than including the effective tax rate in the cap rate, which is appropriate when the taxes are being appealed as excessive.

(4) While the duplexes may be old and in poor condition, they apparently are still able to produce significant and consistent income.

(5) The Town testified the assessments were 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).

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

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to D. Lisa Marcaurette, Agent for Walter W. and Mary Fischer, Taxpayers; George Hildum, Agent for the Town of Durham; and Chairman, Selectmen of Durham.

Dated: October 5, 1995

Valerie B. Lanigan, Clerk

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