

Christine Duci

v.

Town of Hudson

Docket No.: 14145-93-PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$82,500 on a condominium (the Property). The Taxpayer 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 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) the physical data on the assessment card was incorrect -- there have been no updates, the building was poorly constructed, and the basement has been unusable because it is constantly damp;

- 2) real estate specialists have concurred the Property's value was between \$45,000 and \$50,000 because three units have sold for \$50,000 or less;
- 3) comparable properties were assessed in the low-to-mid \$50,000 to \$70,000 range; and
- 4) the Town failed to respond to Taxpayer's abatement appeal in a timely manner, and the Property was not viewed.

The Town argued the assessment was proper because:

- 1) the Property was depreciated for the damp basement, and no updates were charged;
- 2) the Taxpayer mentioned realtors' estimates but none were submitted;
- 3) the Taxpayer's comparables were not of the same layout and quality; and
- 4) the Taxpayer was notified an appeal could be made to this board because the review of abatement requests was time consuming and the appeal deadline was approaching.

BOARD FINDINGS

Based on the evidence, the board finds the Taxpayer did not show overassessment.

While the Taxpayer asserted the Property had a value of approximately \$50,000, the Taxpayer did not submit any evidence to support this conclusion other than her statement. Without such evidence, the board cannot determine whether the evidence would have shown the Property's market value to be \$50,000.

We note that the Property's equalized value was only \$69,920 (the \$82,500 assessment divided by the revenue department's 1.18 equalization ratio). This equalized value should approximate market value. Thus, the Taxpayer should

have shown that the Property was worth less than \$69,920, which was not done.

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The Town responded to the Taxpayer's concerns about the assessment card, including stating that an adjustment was made for the wet basement.

The board encourages municipalities to answer all abatement applications before an appeal is necessitated to this board. It is unfortunate that this could not have been done here. Additionally, it is unfortunate that the Town did not submit any market data to support the assessment, and the board hopes the Town will do so in the future.

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 and arguments submitted to the board, the board's decision was erroneous in fact or in law. This, 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. 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Christine Duci, Taxpayer; and the Chairman, Board of Selectman.

Dated: September 13, 1995

Clerk

Melanie J. Ekstrom, Deputy

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ORDER

This order responds to the "Taxpayer's" rehearing motion, which is denied for failing to state how the board erred as a matter of fact or law. The board refers to the original decision for the reasons why the Taxpayer's appeal was properly denied. In this order the board will address two specific issues raised in the rehearing motion.

The Taxpayer asserted the board was incorrect in stating the 1993 assessment included an adjustment because of the dampness in the basement. The assessment-record card, which was printed in 1991, states under "depreciation notes": "ADD PHNS. H2O --- 5%." (Copy of assessment card attached.) This means the "Town" depreciated the building by 5% for additional physical depreciation due to the water problem. Because the Town has made an adjustment, the board denies the rehearing motion on this ground. If the board is incorrect about this, the Town shall inform the board and the Taxpayer, and

the Town shall issue abatements using the 5% physical depreciation as shown on the card supplied to the board.

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The Taxpayer also attempted to provide the board with new documentation from a realtor to establish the property's value. The board will not accept this material as a basis for rehearing. First, our rule TAX 201.37 (e) generally prevents the board from accepting new evidence with a rehearing motion. The submitted information is clearly new evidence, and there is no reason to find the material must be allowed under TAX 201.37 (e). The realtor information was completed in October of 1995 when the year under appeal is 1993. Moreover, the Taxpayer stated in her brief that she had a realtor opinion placing the Property's value between \$45,000 and \$50,000, but that was not the documentation that was supplied with the rehearing motion. Rather, it appears that the Taxpayer went out and obtained a new realtor estimate.

For the above reasons, the rehearing motion is denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Certification

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

this date, postage prepaid, to Christine Duci, Taxpayer; and the Chairman,
Board of Selectman.

Date: October 27, 1995

Valerie B. Lanigan, Clerk

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