

Francis J. and Judith A. Plourde

v.

Town of Fremont

Docket No.: 14256-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$175,500 (land \$73,950; buildings \$101,600) on a condominium at Fremont's Choice 1 (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was 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 failed to meet their burden of proof.

The Taxpayers argued the assessment was excessive because:

- (1) the assessment is not on the same basis as other condominiums in Town; and
- (2) the 1993 assessment should be determined based on the 1993 market value estimate times the 1992 equalization ratio.

The Town argued the assessment was proper because:

- (1) the Taxpayers' purchase of the Property for \$128,000 in September 1992 when equalized is within 4% of the assessed value;

- (2) the Taxpayers had an opinion of value as of June 1993 of \$130,000;
- (3) the Town had offered to reduce the assessment to the \$128,000 purchase price equalized by the 1993 ratio of 133%;
- (4) sales of other units in the same and adjoining development support the assessment; and
- (5) the Town's ratios from 1993 to 1995 range from 132% to 135% with coefficients of dispersions ranging from 8.88 to 14.35 - all indicating reasonable assessment equity.

Board's Rulings

Based on the evidence, we find the Taxpayers did not carry their burden.

Assessments must be based on market value. See RSA 75:1. Due to market fluctuations, assessments may not always be at market value. A property's assessment, therefore, is not unfair simply because it exceeds the property's market value. The assessment on a specific property, however, must be proportional to the general level of assessment in the municipality. In this municipality, the 1993 level of assessment was 133% as determined by the revenue department's equalization ratio. This means assessments generally were higher than market value. The Property's equalized assessment was \$131,950 ($\$175,500 \text{ assessment} \div 1.33 \text{ equalization ratio}$). This equalized assessment should provide an approximation of market value. To prove overassessment, the Taxpayers would have to show the Property was worth less than the \$131,950 equalized value. Such a showing would indicate the Property was assessed higher than the general level of assessment.

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All the market evidence submitted at this hearing generally supports the assessment. The Taxpayers purchased the Property in 1992 for \$128,000. An opinion of value from a realtor in May 1993 estimated the market value at \$130,000. The Town submitted sales of several other units within the same development that sold in the \$130,000 to \$140,000 range in 1992 and 1993. All the market evidence of the Taxpayers' Property indicates that it was reasonably assessed.

The Taxpayers also argued that their condominium type of dwelling was assessed at a higher rate than single-family homes on their own lot. Disproportionality is best shown by a comparison to market value as opposed to a comparison to other different types of property. Different types of property are often marketed different ways and, as a result, the assessments may be analyzed and calculated in different fashions. Therefore, a comparison of assessments of different types of property does not conclusively prove disproportionality.

Further, it is also possible that some of the properties the Taxpayers compared theirs to may be underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the

standard yardstick. The courts have held that in measuring tax burden, market

value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., id.

Lastly, the board finds that it is appropriate for the 1993 equalization ratio to be used, and not the 1992 ratio, in determining whether the Property was properly assessed for the 1993 tax year. While the department of revenue administration does not normally have the current year ratio available until after the tax bills have been sent out, it nonetheless is the best representation of the level of assessment in the community as of April 1 of that year.

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.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Francis J. and Judith A. Plourde, Taxpayers; and Chairman, Selectmen of Fremont.

Dated: May 23, 1996

Valerie B. Lanigan, Clerk

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