James and Susanne Trice

v.

City of Concord

Docket No.: 14662-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of $327,400 (land $107,200; buildings $220,200) on a 1.09-acre lot with a single-family home (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 carry their burden.

The Taxpayers argued the assessment was excessive because:

(1) the land was purchased in 1992 for $80,000 and the house was built for $180,000;

(2) an October 1993 bank appraisal estimated the fair market value to be $280,000;

(3) a property located at 23 Dwinnell was appraised for $280,000 and the City's assessment was $248,900; and

(4) the City's system is arbitrary and not reflective of market value.

The Town argued the assessment was proper because:

(1) the assessment when equalized by the equalization ratio of 124% indicates a value of $264,000;

(2) the Taxpayers stated in interrogatories filed with the City that their opinion of value was $280,000; and

(3) the Taxpayers and their appraiser's opinion of value is less than the Property's equalized value.

Board's Rulings

Based on the evidence, we find the Taxpayers failed to prove the Property was disproportionately assessed.

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 124% as determined by the revenue department's equalization ratio. This means assessments generally were higher than market value. The Property's equalized assessment was $264,032 ($327,400 assessment ÷ 1.24 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 $264,032 equalized value. Such a showing would

was assessed higher than the general level of assessment. In this case, the Taxpayers evidence of (1) the land purchase of $80,000 and cost to build the house at $180,000; and (2) October 1993 appraisal in the amount of $280,000 supported the assessment.

The Taxpayers argued that a similar property was assessed significantly less than its appraised value which they felt indicated the City's system was arbitrary and not reflective of market value. Without having additional evidence regarding the Dwinnell property, the board has no basis to make such a determination. Further, if the appraised value was in excess of the assessed value, it could be an indication that the property was 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.

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

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to James and Susanne Trice, Condemnees; James M. Cassidy, Esq., Counsel for the Taxpayers; and Michael J. Ryan, Director Real Estate Assessments, City of Concord.

Date: July 22, 1996

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Valerie B. Lanigan, Clerk

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