

Gerald A. and Arleen L. Ruffner

v.

Town of Durham

Docket No.: 14717-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$135,000 (land, \$43,200; building, \$91,800) consisting of .9 acres with building (the Property). The Taxpayers 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 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 this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) the value is based upon incorrect data, i.e., actual gross square footage of second floor, electric heat; and
- 2) the proper assessed value would have been \$2,000 to \$4,000 less based on the

actual gross square footage.

Page 2

Ruffner v. Town of Durham

Docket No.: 14717-93PT

The Town argued the assessment was proper because:

- 1) a 2% functional obsolescence was given to reflect the loss of the living area;
- 2) the electric heat was adjusted in the grading index;
- 3) two comparable sales, having similar features as the Taxpayers, revealed the methodology utilized for valuing gambrels was supported by the market; and
- 4) the Taxpayers' arguments failed to prove the assessment was excessive and therefore, no further adjustment was warranted.

BOARD FINDINGS

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed.

The sole issue raised by the Taxpayers in this case was whether the Town's 2% adjustment on the replacement cost of the house adequately recognizes the lack of living area on the second floor due to the dormer and gambrel roof configuration. The Taxpayers, in their appeal document to the board, indicated the assessment should be reduced by \$2,000. In the Taxpayers' subsequent brief, the same arguments were made but the requested reduction was then \$4,000 based on their assertion that the 2% depreciation provided by the Town accounted for the lack of desirability of electric heat.

The board finds no evidence was submitted to counter the Town's explanation that the electric heat was adjusted in the grading and original replacement cost of the house. Thus, the remaining difference in value is \$2,000 on a \$135,000 total assessment. The board finds the Taxpayers are attempting to split the assessment process too finely. The Town utilized a

cost approach in arriving at an estimate of market value for all properties in the Town. The cost approach, however, is only one of three approaches to estimating value - market and income

Page 3

Ruffner v. Town of Durham

Docket No.: 14717-93PT

approach being the other two. An estimate of value by any of the three approaches is strictly that -- an estimate. The market value of real estate is not an objective, technical determination. Rather, the focus of our inquiry is proportionality, requiring a review of the assessment to determine whether the property is assessed at a higher level than the level generally prevailing. Appeal of Town of Sunapee, 126 N.H. at 219; Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982). There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the Municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

The statute makes the proceeding for the abatement of a tax a summary one, free from technical and formal obstructions. The question is, does justice require an abatement? . . . The justice to be administered is to be sufficiently exact for the practical purposes of the legislature, who did not intend to invite the parties to a struggle for costs, or a ruinous contention about trifles. The points to be considered are such as the nature of each particular case presents. Mancheser Mills v. Manchester, 58 N.H. 38, 39 (1876).

The board finds the Town has provided adequate market evidence to show that the Taxpayers' assessment is a reasonable estimate of market value and proportionally determines their tax burden.

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 Page 4
Ruffner v. Town of Durham
Docket No.: 14717-93PT

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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Gerald A. and Arleen L. Ruffner, Taxpayers; and Chairman, Board of Selectmen, Town of Durham.

Dated: August 11, 1995

Melanie J. Ekstrom, Deputy Clerk

