Albert Jr. & Jeannette Couture

v.

Town of New Boston

Docket No.: 14793-93PT

DECISION

The "Taxpayers" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of $174,100 (land $51,900; buildings $122,200) on a property consisting of a dwelling and garage on a 2.59 acre lot (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 their burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:
(1) the Property was purchased by the Taxpayers in September 1992 for $138,500;

(2) a July 1992 appraisal indicated a market value of $139,000 and a September 1993 appraisal indicated a market value of $136,000; and

(3) a comparison of the assessed values and tax bills of the six comparables contained in the two appraisal reports indicate the Property is assessed at a higher level of assessment than the comparables.

The Town argued the assessment was proper because:

(1) the Town accepts the Taxpayers' 1993 appraisal value of $136,000;

(2) this market value, if equalized by the Town's 1993 ratio of 1.29, supports the assessed value; and

(3) the Taxpayers failed to prove a different 1993 level of assessment than the 1.29 level.

Board's Rulings

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 129% as determined by the revenue department's equalization ratio. This means assessments generally were higher than market value. The Property's equalized assessment was $134,961 ($174,100 assessment ÷ 1.29 equalization ratio). This equalized assessment should provide an approximation of market value. To prove overassessment, the Taxpayer would have to show the Property was worth less than the $134,961 equalized value. Such a showing would indicate the Property

was assessed higher than the general level of assessment.

The Taxpayers submitted three indications of market value: the purchase of the Property in 1992 for $138,500, a July 1992 appraisal at $139,500 and a September 1993 appraisal at $136,000. All three indications of market value are similar to the equalized assessed value and thus support the Town's assessment.

The Taxpayers also attempted to show that the Property was assessed at a higher level of assessment than other similar residential properties. The board performed a time-adjusted ratio analysis of the six comparables submitted by the Taxpayers and determined that the median ratio was 121%. However, this does not determine the general level of assessment in a community. The court has recently held that properties must be assessed at the general level of assessment for the entire community not just at a level for a certain class of property. Appeal of Andrews, N.H. 136, 61, 64 (1992).

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. Thus, 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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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 Marc A. Pinard, Esq., counsel for the Taxpayers; and, Chairman, Selectmen of New Boston.

Date: February 2, 1996

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Lynn M. Wheeler, Deputy Clerk