Adria L. Bailey, Trustee
CZ Realty Trust

v.

Town of Kingston

Docket No.: 15144-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 adjusted assessments of $112,680 (land $50,400; buildings $62,280) on "Lot 34", an 8,712 square-foot lot with a house; and $2,000 on "Lot 40," a vacant 4,356 square-foot lot (the Properties). The Properties are actually comprised of nine 20' x 80' lots (Lot 34 has six lots; Lot 40 has three lots) and are contiguous to each other. 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 abatements is denied.

The Taxpayer has the burden of showing the assessments were 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 and prove disproportionality.

The Taxpayer argued the assessments were excessive because:

(1) one-half of Lot 34 is wetlands;

(2) the house addition was not complete, its conditions has remained unchanged since 1991, but the building value has increased since 1991;

(3) Lot 40 was purchased from the Town, but the Town never had clear title;

(4) significant expense has been incurred to date to secure lot-line adjustments and to prosecute a quiet-title action; and

(5) the Properties' combined fair market value on April 1, 1994, was $99,280.

The Town argued the assessments were proper because the equalized assessment ($114,680 ÷ 1.22) equals $94,000, which is less than the Taxpayer's claim of fair market value as of April 1, 1994.

BOARD'S RULINGS

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

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 1994 level of assessment was 122% as determined by the revenue department's equalization ratio. This means assessments generally were higher than market value. The Properties' combined equalized assessments were $94,000 ($114,680 assessment ÷ 1.22 equalization ratio). This equalized assessment should provide an approximation of market value. To prove overassessment, the Taxpayer would have to show the Properties were worth less

than the $94,000

equalized value. Such a showing would indicate the Properties were assessed higher than the general level of assessment.

The Taxpayer did not show the Properties were worth less than the $94,000 equalized value. As a matter of fact, the Taxpayer estimated the Properties' combined value to be $99,280.

We also note that the Town made adjustments for two of the issues raised by the Taxpayer. First, the Town reduced the land assessment for Lot 40 from $4,700 to $2,000 because of the title issue. Second, the Town increased the depreciation on the house due to the incomplete construction, which reduced the house assessment from $68,800 to $62,280.

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, <u>not the date this decision is received</u>. 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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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Adria L. Bailey, Trustee of CZ Realty Trust, Taxpayer; and Chairman, Selectmen of Kingston.

Date: February 29, 1995

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Lynn M. Wheeler, Deputy Clerk