

Raymond J. and Anne McInnis

v.

Town of Greenville

Docket No.: 15228-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$185,700 (land \$40,600; buildings \$145,100) on a 2.03-acre lot with a single-family house (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 Taxpayer has the burden of showing the assessment was disproportionately high or was unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

- (1) the Property's view consists of a run-down trailer park, and the Property's only access is by driving through this park;
- (2) a March 1993 appraisal estimated a \$117,000 value;
- (3) the Town stated the assessments were based on the 1988 values, yet a 1988 appraisal estimated a \$160,000 value; and

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- (4) comparable homes have lower assessments, and a superior home with more amenities had a lower assessment than the Property.

The Town argued the assessment was proper because:

- (1) the Taxpayers' comparables support the Property's assessment;
- (2) the Property's assessment does exceed the market value as evidenced by DRA's 159% equalization ratio for tax year 1994;
- (3) all the properties in the Town have assessments that exceed those properties' market values, which is evidence of equitable assessment; and
- (4) the same methodology was applied throughout the Town by MMC.

Board's Rulings

Based on the evidence, the board finds 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 1994 level of assessment was 159% as determined by the revenue department's equalization ratio. This means

assessments generally were higher than market value. The Property's equalized assessment was \$116,792 (\$185,700 assessment ÷ 1.59 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 \$116,792 equalized value. Such a showing would indicate the Property was assessed higher than the general level of assessment. In this case, the Taxpayers submitted an appraisal which indicated a fair market value of \$117,000. This appraisal supports the assessed value of the Property.

The Taxpayers further argued that comparable homes have lower assessments which suggests that some properties may in fact 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,

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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.*

In spite of the above rulings, the board finds that the Taxpayers did raise legitimate concerns and perhaps the Town should have assigned some adjustment for the Property's location; however, the equalization ratio indicated the Taxpayers were properly assessed. Based on a review of the

evidence in this appeal, the date of the Town's last revaluation (1988) and the high equalization ratio (159%), the board considered asserting its RSA 71-B:16 III authority to determine if there was a need for a reassessment in the Town ("when in the judgment of the board, determined in accordance with RSA 71-B:16-a, any or all of the property in a taxing district should be reassessed or newly assessed"). However, the Town stated that it had initiated a revaluation fund and was attempting to raise and appropriate sufficient funds for a 1996 revaluation. Given this information, the board declines to assert jurisdiction but encourages the Town to proceed with their revaluation plans.

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.

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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

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Raymond J. and Anne McInnis, Taxpayers; and Chairman, Selectmen of Greenville.

Date: January 10, 1997

Valerie B. Lanigan, Clerk

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