

Lawrence C. Zalcman

v.

Town of Thornton

Docket Nos.: 15296-94PT and 16099-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 and 1995 assessments of \$73,400 on a residential condominium (the Property). For the reasons stated below, the appeals for abatement are denied.

These appeals were consolidated for hearing. The Taxpayer did not appear but was granted leave consistent with our rule TAX 202.06. The Town did not appear, but consistent with our rule TAX 202.06(h), the Town was not defaulted. This decision is based on the evidence presented to the board.

The Taxpayer has the burden of showing the assessments were disproportionately high or 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 assessments were higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to carry this burden.

The Taxpayer argued the assessments were excessive because:

- (1) there was a disproportionate level of assessment between similar condominiums in Waterville Acres;
- (2) unit 7 sold in September 1996 for \$52,000, fully furnished;
- (3) unit 18 sold in 1995 for \$55,000, fully furnished and with a third floor bathroom;
- (4) unit 3, next to the Property, is for sale for \$59,000 (The Taxpayer stated this property would sell for approximately \$50,000.);
- (5) the \$6,500 cost to improve the siding on the units should be deducted from the \$52,000 current average sale price; and
- (6) the Taxpayer stated the Property was worth \$46,000.

The Town presented no arguments.

Board's Rulings

Based on the written record, the board denies the appeals, finding the Taxpayer did not show the Property was overassessed.

The Taxpayer argued the Property was worth approximately \$46,000 (\$52,000 average selling price - \$6,500 for siding repair). The Taxpayer did not submit any photographs of the Property, and he did not submit further information about the siding problems or any estimates to repair the problems. Moreover, the sales in the development would have included consideration of the siding problem. The Taxpayer's information demonstrated a value of \$46,000 to \$52,000.

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

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municipality, the 1994 level of assessment was 1.41 (as determined by the revenue department's equalization ratio), and the 1995 level of assessment was 1.54. This means assessments generally were

higher than market value. The Property's equalized assessments were: 1994 -- \$52,100 (\$73,400 assessment ÷ 1.41 equalization ratio); and 1995 -- \$47,700 (\$73,400 assessment ÷ 1.54 equalization ratio). These equalized assessments should provide an approximation of market values. To prove overassessment, the Taxpayer would have to show the Property was worth less than the \$52,100 in 1994 and less than \$47,700 in 1995. Such a showing would indicate the Property was assessed higher than the general level of assessment.

The Taxpayer, however, failed to show the Property was worth less than these amounts, and his own information (\$46,000 to \$52,000) supported the equalized assessments.

Concerning any discrepancy in assessments on similar properties, the Taxpayer submitted insufficient information for the board to draw any conclusions. Most importantly, the board focuses on the specific appealed property and compares that assessment to the general level of assessment in a municipality. In other words, the board does not just look at the appealed property and compare it to only similar properties. Also, because the Taxpayer's information supported the equalized assessments, the Taxpayer did not show any errors resulted in disproportionality. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

The board wants to comment on the Taxpayer's continuance request. The board only grants continuances in extraordinary circumstances, TAX 201.26, because the board wants to efficiently serve all appellants by hearing cases in a timely manner. When the board grants a continuance, that case

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must be rescheduled in a hearing slot that would have been available for another case. The board's policy is not based on inconveniencing the parties for the board's convenience. Rather, it is the board's attempt to more promptly hear taxpayer's cases.

In this case, the Taxpayer requested a continuance due to the flu. Yet, the day before the hearing

(October 31, 1996) the Taxpayer was at work. Moreover, before ruling on the continuance, the board reviewed these files and the board's previous decision (Docket No.: 14763-93PT). This review indicated the Taxpayer could present an adequate case without a hearing, and the board allowed the Taxpayer to present his case in writing. Finally, the Taxpayer's information did not form a basis for granting the appeal, and the Taxpayer's nonappearance did not prejudice his case.

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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Lawrence C. Zalcman, Taxpayer; and Chairman, Selectmen of Thornton.

Date: November 19, 1996

Valerie B. Lanigan, Clerk

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