

Chao Cheng Teng

v.

Town of Peterborough

Docket No.: 15455-94PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 reduced assessment of \$155,200 on a 1.01-acre lot with a single-family home (the Property). For the reasons stated below, the appeal for abatement is denied. However, the board is ordering the Town to reduce the assessment for 1995 and 1996 to \$155,200, which the Town indicated it would do.

The Taxpayer has the burden of showing the assessment was 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 assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the Property has no water;

- (2) the Property has been vandalized because it cannot be lived in; and
- (3) the only offer for the Property was for \$40,000.

The Town argued the assessment was proper because:

- (1) if the Taxpayer pays overdue water bills, the water would be turned on;
- (2) the Property is located in a better neighborhood of Town;

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- (3) based on a 1995 inspection, one room was in bad condition, the exterior needed repainting and gutter repair was needed; and
- (4) a comparison of assessments on comparable properties supported the property's assessment.

After the hearing, the board issued an order on April 3, 1997, that required the Taxpayer to submit a list of the problems with the house, the date the problem arose and the approximate repair cost. The board also ordered the Town to reinspect the Property with the Taxpayer and to then file a report with the board about whether the assessment should be adjusted or not. In an April 14, 1997 letter, the Taxpayer submitted a list of problems with an estimate of \$11,250 to repair the items listed. The Town also stated it inspected the Property, but it would only recommend adjusting the 1995 and 1996 assessments to \$155,200.

#### **Board's Rulings**

With the exception of reducing the 1995 and 1996 assessments to \$155,200, the board denies the Taxpayer's appeal. As will be detailed below, the board finds the Taxpayer did not show that the assessment was excessive.

The Taxpayer spent a considerable amount of time complaining about the Property's lack of water. The Property's water was turned off because of

unpaid bills. The Town stated that once the overdue bills were paid, the water would be turned back on. While the board understands the Taxpayer's frustration on this point, the lack of water is not something that affects the Property's market value. Rather, it is a condition that is personal to the Taxpayer herself. The failure to pay the water bill is akin to not paying one's mortgage. Certainly, the payment history on a mortgage is irrelevant to a property's value.

The Taxpayer did not present any credible evidence of the Property's fair market value. To carry her burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessment generally in

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the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

Because the Taxpayer did not present any market information, the board could not conclude the assessment was excessive. The Property has some problems, including some breaks ins, but the board did not know whether these problems reduced the Property's value below the Property's \$120,300 equalized value (\$155,200 assessment ÷ 1.29 equalization ratio).

The Taxpayer's asserted list of repairs is relevant to the Property's market value. However, the Town considered the Property's condition both in the building grade and in the depreciation. Specifically, the building was graded a C+ and received 25% depreciation. Without any market information, the board could not determine whether these adjustments were sufficient. The

board finds the Taxpayer did not prove that the adjustments were inadequate. We note that the total depreciation on the Property was approximately \$26,000 in value (\$33,500 assessment reduction for depreciation ÷ 1.29 equalization ratio).

In conclusion, the board finds the Taxpayer did not carry her burden of proof. She did not prove that the Property's equalized assessment exceeded the Property's market value. Further, to the extent the Property had damage, the Town addressed that issue in the assessment by depreciating the building.

There is nothing in the record that would warrant an assessment reduction because the Taxpayer did not provide any supportable information upon which a reduction could be based.

Nonetheless, the Town agreed the 1995 and 1996 assessments should be reduced to \$155,200. Therefore, if the taxes have been paid in 1995 and 1996, the amount paid on the value in excess of \$155,200 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., 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 Chao Cheng Teng, Taxpayer; and Chairman, Selectmen of Peterborough.

Date: August 7, 1997

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Valerie B. Lanigan, Clerk

Chao Cheng Teng

v.

Town of Peterborough

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ORDER

This order responds to the "Taxpayer's" December 16, 1996 motion to reconsider her default for not attending her hearing of December 6, 1996 at 9:00 a.m. as required by TAX 202.06 (a).

The board grants the Taxpayer's request and reschedules the hearing for March 26, 1997 at 9:00 a.m.. In granting the Taxpayer's request the board is cognizant of the inconvenience this may cause the "Town." However, the Taxpayer was in Concord at the proper time and did make efforts to locate the board's office. The Taxpayer should before the rescheduled hearing make certain of directions to the board's office and be at the March 26, 1997 hearing on time. The board will also schedule other 1995 Peterborough appeals for the same day so the Town does not travel to Concord for only one appeal.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

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**Certification**

I hereby certify that a copy of the foregoing order has ben mailed this date, postage prepaid, to Chao Cheng Teng, Taxpayer; and Chairman, Selectmen of Peterborough.

Date: January 8, 1997

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Valerie B. Lanigan, Clerk

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Chao Cheng Teng

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Town of Peterborough

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ORDER

At the hearing, the board decided to issue this order to gather additional information to assist the board in deciding this appeal. As stated at the hearing, the "Taxpayer" focused her arguments on two issues: 1) the "Property's" lack of water due to shut off for nonpayment; and 2) damage that the Property sustained because the Taxpayer was not living in the Property. The board told the parties that the first issue did not appear to entitle the Taxpayer to any relief. The board told the parties that the second issue may entitle the Taxpayer to relief. The Taxpayer, however, was not prepared to provide the board with an itemization of the problems at the Property, an itemization of the anticipated cost to fix the problems or an estimate of the Property's value. Normally, the board would have simply denied this appeal. Nonetheless, in the interest of fully exploring the correctness of the assessment, the board decided to require the parties to meet at the Property so the "Town" could perform an interior inspection and then review the

assessment.

The board, therefore, makes the following orders.

1) The Taxpayer shall by April 16, 1997, file with the board a list of all damages or problems with the house. This list shall describe the extent of the damage and shall include an approximate date of damage. As the board several

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times tried to explain to the Taxpayer, the date damage occurred is very important because the board must know the Property's condition as of April 1, 1994 (the assessment date). The Taxpayer may include photographs.

2) In addition to sending this information to the board, the Taxpayer shall also send a copy of the damage list, with copies of any photographs or other submitted documents, to the Town (Town of Peterborough, Chairman, Board of Selectmen, 1 Grove Street, Peterborough, New Hampshire, 03458).

If the Taxpayer fails to file this information in a timely manner, the board will decide this case without requiring the Town to perform an inspection of the Property. As previously stated, the existing evidence would probably not entitle the Taxpayer to an abatement.

3) Upon receipt of the Taxpayer's information, the Town shall inspect the Property with the Taxpayer. The Town shall provide the Taxpayer with two appointment dates and times, and the Taxpayer shall make diligent efforts to agree to one of those dates. At the inspection, the Taxpayer shall restrict her remarks to property damage. The Taxpayer shall not further discuss the water shut-off issue with the Town. The Town shall make a reasonable

inspection of the Property, and the board anticipates this inspection taking no more than 20 - 30 minutes.

4) Upon completion of the inspection, but no later than May 16, 1997, the Town shall file a letter with the board stating the results of its inspection and stating whether any assessment change is recommended. The Town shall copy this letter to the Taxpayer (P.O. Box 181, Exeter, New Hampshire, 03833).

Upon receipt of the above documents, the board will deliberate and issue a decision.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

**Certification**

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Chao Cheng Teng, Taxpayer; and Chairman, Selectmen

of Peterborough.

Date: April 3, 1997

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Valerie B. Lanigan, Clerk

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