

Janet DiBiaso

v.

Town of Newton

Docket No.: 15481-94PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$40,300 on a mobile home in a trailer park (the Property). 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 abatement is denied but the Town is ordered to use the revised assessment of \$31,800.

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 Taxpayer argued the assessment was excessive because:

- (1) the 10% physical depreciation is inadequate, considering the Property is 21 years old;
- (2) the Property was listed for sale for 140 days at \$29,900 and eventually sold in October 1994 for only \$20,000;

Page 2

DiBiaso v. Town of Newton

Docket No.: 15481-94PT

- (3) comparable mobile homes sold for far less than their assessed values; and
- (4) the Town's 1994 ratio was 105%, yet the Property was assessed at 202% of the October 1994 sale price.

The Town adjusted the assessment after conducting an interior inspection of the Property, which had never been previously performed. The Town increased the physical depreciation, which resulted in a \$31,800 assessment. The Town argued the adjusted assessment was proper because it is supported by assessments on comparable mobile-home units.

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

Based on the evidence, the board finds the proper value to be the Town's revised assessment of \$31,800. This assessment, when equalized by the department of revenue administration's ratio of 1.05%, indicates a \$30,285 market value ( $\$30,285 \times 1.05 = \$31,800$ ).

The Taxpayer indicated the Property was purchased for \$20,000 in October 1994. While this is some evidence of the Property's market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). However, where it is demonstrated that the sale was an arm's-length market sale, the sales price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988).

In this case, the board has no knowledge of the previous sale of the Property for \$46,381 in 1990. It appears to be a tremendous drop in value for what seems to be a building in reasonably good shape and the Taxpayer provided insufficient information regarding the purchase for the board to determine if it was an arm's-length transaction. For instance, the Property was placed on the market for \$29,900 and sold for one-third less that value 140 days later.

Further, the Taxpayer listed three properties of mobile homes to support his assertion that the Property was overassessed. However, the Taxpayer gave the board no information regarding the type, size and condition of the homes and made no comparisons for the board to determine what, if any, adjustments should be made to the sales to arrive at a value conclusion.

Page 3

DiBiaso v. Town of Newton

Docket No.: 15481-94PT

The Town made an interior inspection of the Property and made adjustments (grade change from 2½ to a 2, 20% physical depreciation and 20% functional depreciation) resulting in an \$8,500 reduction in the assessed value. The board finds the Town's adjustments to be reasonable and consistent with the comparables submitted by the Town.

If the taxes have been paid, the amount paid on the value in excess of \$31,800 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1995 and 1996. 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.

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.

Page 4  
DiBiaso v. Town of Newton  
Docket No.: 15481-94PT

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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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 Earl Hall, Agent for Janet DiBiaso, Taxpayer; and Chairman, Selectmen of Newton.

Date: January 10, 1997

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Valerie B. Lanigan, Clerk

0006