

Wade M. and Helen S. Burnette

v.

City of Portsmouth

Docket No.: 15514-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1994 assessment of \$92,000 (land, \$35,800; building, \$56,200) on .162-acres with a building (the Property). The Taxpayers and the City 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 Taxpayers have the burden of showing the assessment was disproportionately high or was unlawful, resulting in the Taxpayers 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 Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

- 1) the City has assessed the incorrect size for the lot;
- 2) one-third of the Property is inundated with ice and water each spring, limiting usual outdoor activities;

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- 3) the City's average assessment of residential land was approximately \$4.00 per square foot, yet the Property was assessed at \$5.11 per square foot; and
- 4) a fair assessment on the land would be \$26,148.

The Taxpayers also filed a rebuttal to the Town's brief, which the board reviewed.

The City argued the assessment was proper because:

- 1) most residential valuations increased due to the 1994 revaluation because the City went from 57% of market value to 97% of market value;
- 2) the land-comparison chart demonstrated that all lots were valued using the same land schedule and were proportionately assessed relative to size;
- 4) the assessed-value-comparison chart demonstrated that the Property was assessed consistently with other properties;
- 5) the assessing records revealed that the Taxpayers' lot is 7,054 square feet, which size calculation was based upon the deed; and
- 6) seasonal standing water does not have a significant effect on the Property's value because such water is not unusual in the area.

BOARD FINDINGS

Based on the evidence, the board finds the Taxpayers did not show the

Property was overassessed.

The Taxpayers insisted several times that they were only appealing the land assessment. Nonetheless, the board must review the total assessment (land and building) to determine if overassessment exists. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). While municipalities allocate assessments by land and building, the market pays one price for a property. See also RSA 76:2-a (supp. 1996) (municipality may combine land and building value, using the combined value as the assessment). The total assessment must accurately reflect the total value and not the allocated values.

Because they only focused on the land assessment, the Taxpayers did not present any credible evidence of the Property's fair market value. To carry their burden, the Taxpayers should have made a showing of the Property's total

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fair market value. This value would then have been compared to the Property's assessment and the level of assessment generally in the City. 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 Taxpayers failed to do this, the appeal must be denied.

While the Taxpayers failed to show the total Property was overassessed, the Taxpayers did raise concerns about errors in the assessment -- lot size and seasonal water. However, the Taxpayers did not show these 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. 214, 217 (1985), quoting Amoskeag Manufacturing Co.

v. Manchester, 70 N.H. 200, 205 (1899).

Concerning the lot size, the Taxpayers have the burden to show that the assessment-record card was in error. The Taxpayers did not show this. The board reviewed the deed, sketched the deed description, reviewed the tax map, and performed some size calculations. The board's review indicates the City's lot-size calculation was reasonably accurate. The Taxpayers stated they had an industrial engineer sketch out the Property to show the correct lot size, but the Taxpayers did not submit that sketch and those calculations to the board. Moreover, even if the City's lot size was incorrect, the City demonstrated that the assessment itself would not change because the City's land-assessment chart assessed lots between 6,688 square feet to 7,055 feet at \$35,800. (City's calculated size -- 7,054 square feet; Taxpayers' asserted size -- 6,881 square feet.)

Concerning the seasonal wetness, the Taxpayers did not show that this situation was unusual or required a value adjustment.

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Finally, the Taxpayers complained about the assessment increase due to the revaluation. This argument also does not warrant an abatement. Increases from past assessments are not evidence that a taxpayer's property is disproportionally assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985).

Based on the above, the board finds the Taxpayers are not entitled to an abatement.

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. This, 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

Ignatius MacLellan, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Wade M. and Helen S. Burnette, Taxpayers; and Chairman, Board of Assessors.

Date: February 13, 1997

Valerie B. Lanigan, Clerk

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