

James H. and Jeannette J. Sheridan

v.

City of Portsmouth

Docket No.: 15634-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1994 assessment of \$164,800 (land \$46,100; buildings \$118,700) on a .98-acre lot with a house (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 unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry their burden.

The Taxpayers argued the assessment was excessive because:

- (1) the lot is very small, has a 4-foot high retaining wall along the entire right boundary line and generally has minimal land (3 to 10 feet) around the buildings;
- (2) the driveway and garage are very narrow and will accommodate only one car;

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- (3) the Property's per-square-foot value is excessive compared to neighboring lots with more usable land;
- (4) the Property's extremely small lot has a negative impact on the value; and
- (5) the Property's market value on April 1, 1994 was \$132,300.

The City argued the assessment was proper because:

- (1) the land was assessed consistently with other lots in the neighborhood;
- (2) the same methodology was used throughout the City;
- (3) the Property's per-square-foot value is within range of the neighboring lots' per-square-foot values;
- (4) the Property's small lot is very common for the area;
- (5) larger lots have lower per-square-foot values; and
- (6) three sales support the Property's assessment.

BOARD'S RULINGS

Based on the evidence, the board finds the Taxpayers failed to carry their burden.

The Taxpayers' primary argument was that their lot should be assessed at an average square foot price of several of the other properties on Highland Street with larger, more usable lots. The Taxpayers failed to show, however, that their argument is market related. No sales of smaller lot properties were submitted by the Taxpayers. The City did submit three sales of small lot properties (3,125 - 5,260 square feet) that indicate the City's assessment methodology is generally supported by the market. The City's methodology, in essence, attempts to arrive at a site value for a lot supporting a dwelling. The lot values of the Taxpayers' comparables vary only several thousand dollars reflecting this site value concept. However, on a per-square-foot basis they vary greatly to reflect the fact that the majority of the value is in the basic site and extra square footage above that contributes significantly less.

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The Taxpayers also did not show (no photographs were submitted comparing their lot to other small lots) that the utility of their small lot was inordinately different than that inherent in small urban

lots. Again, the City's sales indicate that there is a market for these small lots in such a setting.

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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to

James H. and Jeannette J. Sheridan, Taxpayers; and Chairman, Board of Assessors, City of Portsmouth.

Date: November 20, 1996

Valerie B. Lanigan, Clerk

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