

Marcia C. MacCormack

v.

City of Portsmouth

Docket No.: 15703-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1994 adjusted assessment of \$175,100 (land \$78,400; buildings \$96,700) on a .121-acre lot with a house (the Property). The Taxpayer 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 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. We find the Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the assessment is based on inaccurate lot measurements;
- (2) the assessment fails to recognize the negative impact waterfront businesses have on the Property's value by affecting the quiet use and enjoyment of the Property;
- (3) the City allows the commercial use of properties in the neighborhood and fails to adhere to zoning regulations;
- (4) the crane of Pickering Marine on South Mill Street is the view from the Property's backyard, and when in use, can be smelled and heard from the Property; and
- (5) the City's comparables are located in the residential zone and do not have close proximity to businesses, and even the properties in the same neighborhood as the subject are not comparable to the Property in views or size.

The City argued the adjusted assessment was proper because:

- (1) the Property has unobstructed water views and frontage on a creek;
- (2) the property granted the change in use is located across the creek from the Property and does not have a negative impact on the Property's value;
- (3) the Property is located in a working port area and its proximity to fishing and boating businesses is considered part of the area's charm and appeal;
- (4) properties in the area typically sell for over \$300,000;
- (5) the properties in the neighborhood were assessed consistently and, when adjusted for differences, support the Property's assessment;
- (6) three comparable sales support the Property's assessment; and
- (7) the Property's condition was addressed by adjusting the assessment.

BOARD'S RULINGS

Based on the evidence, the board finds the Taxpayer failed to carry her burden. First, the Taxpayer argued the lot size was incorrectly stated by the City on the assessment-record card at 5,275 square feet. However, the Taxpayer did not submit any evidence as to what the proper lot size should be other than a hand-drawn line superimposed on the City's tax map with a note that the adjoining property claims a certain strip of land. The Taxpayer gave no details as to the adjoining property's claim or any pending litigation to resolve the contested property.

Second, the Taxpayer argued that nearby commercial boat building and repairs affected the value of her Property. The Taxpayer submitted photographs that were dated 1989 and 1990, but did not claim whether such activities existed for the tax year under appeal. One board member viewed the properties on Salter Street, including the Taxpayer's Property, in November 1996. He noted that the property (Lots 32-A and 32) on which the Taxpayer had submitted photographs of a boat yard did not appear to be operating any longer as a boat yard but rather had been restored for residential purposes.

Third, the Taxpayer argued that the crane across South Mill Creek at Pickering Marine dominated the view from her Property. Likewise, one board member noted on his view that while the crane certainly does exist within sight of the Property, such cranes (most larger) are commonplace along the entire Portsmouth Harbor and appear to be within sight of many properties in Portsmouth. The Taxpayer did not provide any market data of how the viewing of such cranes adversely affected the sale of properties. While it is true that some properties may not have views of the cranes, many properties do. The prevalence of cranes piercing the harbor skyline is a factor that would be commonly assimilated by the market and reflected in sales on which the City used during its most recent reassessment. Therefore, the board finds that no specific adjustment is warranted for the Taxpayer's view of the Pickering Marine crane.

In short, while the Taxpayer raised issues that could certainly affect market value, she did not show that those factors had not been recognized in the City's assessment methodology, nor did she submit any market data to indicate that her Property was inordinately impacted by such activities.

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

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Marcia C. MacCormack, Taxpayer; and Chairman, Board of Assessors, City of Portsmouth.

Date: November 15, 1996

Valerie B. Lanigan, Clerk

0006