

Gary L. Whitcomb

v.

Town of Carroll

Docket No.: 15719-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$57,224 (land \$77,500; current use credit \$42,676; buildings \$22,400) on an 86.83-acre lot (84.83 acres are in current use) with a mobile-home unit (the Property). The Taxpayer also owns, but did not appeal, three other lots in the Town with a combined, \$89,637 assessment. 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.

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.

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The Taxpayer argued the assessment was excessive because:

- (1) the mobile-home unit is 17 years old and when it was new sold for only \$17,300, including furnishings;
- (2) In October 1994 the Taxpayer purchased the unit for \$7,500 (without the furnishings);
- (3) another unit (approximately 10 years old) sold for \$7,500;
- (4) a mobile home company estimated a \$7,581 value for the unit as of July 1995; and
- (5) the unit needs a new roof, new front door, and new windows.

The Town argued the assessment was proper because:

- (1) the Taxpayer's value estimate by the mobile home company is typically for mobile homes being sold off the lot, which are worth less than units on their own land;
- (2) the Taxpayer's comparables supported the Property's assessment after adjusting for differences in the units; and
- (3) the assessment adequately addressed the unit's condition.

The board's paralegal called the Town's representative for some information. The paralegal's memorandum is attached to this decision.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not show overassessment for the following reasons.

1) The Taxpayer did not present any credible evidence of the Property's fair market value. To carry his 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 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. at 217-18.

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2) The Taxpayer's market information was restricted to the value of the home off site. However, the assessment reflects the value of the home on site, and this value includes transferrable value such as location on a property, site improvements and utilities. Therefore, comparing an off-site value of a manufactured home that does not include anything other than the home does not demonstrate the value of a manufactured home on a lot with site improvements and utilities.

3) The Town adequately responded to the appeal, including doing an assessment comparison for the assessments submitted by the Taxpayer in his original appeal document.

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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Gary L. Whitcomb, Taxpayer; and Chairman, Selectmen of Carroll.

Date: January 15, 1997

Valerie B. Lanigan, Clerk

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