

William and Justine Fletcher

v.

Town of Swanzey

Docket No.: 15736-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$19,700 on an airport hangar (the Property). The parties were both granted leave to not attend the hearing pursuant to board rule TAX 202.06. This decision, therefore, is based on the evidence in the file. 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 prove the Property was disproportionately assessed.

The Taxpayers argued the assessment was excessive because:

(1) the Property is one of 20 T-Hangars (T-Hangar #4); the building is jointly owned by a condominium association, with individuals owning their hangar space, and the association is responsible for all other portions of the building, grounds, taxiways and parking lots;

- (2) T-Hangars are built on City of Keene Airport property leased by the condominium association;
- (3) T-Hangars are disproportionately assessed when compared to the assessments and sales of Hexagon Hangars which are free standing, larger and have additional amenities; and
- (4) owners of multiple T-Hangars received lower assessments.

The Town argued the assessment was proper because:

- (1) the assessment is supported by sales of T-Hangars;
- (2) Hexagon Hangars are older, not of the same quality as the subject and have dirt floors; therefore, are not comparable to T-Hangars;
- (3) both T-Hangars and Hexagon Hangars are located on leased City property and both have owner associations; and
- (4) owners of multiple hangars received depreciation based on a 1989 board of tax and land appeals' decision.

Board's Rulings

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

Assessments must be based on market value. See RSA 75:1. Due to market fluctuations, assessments may not always be at market value. The assessment on a specific property, however, must be proportional to the general level of assessment in the municipality. In this municipality, the 1994 level of assessment was 96% as determined by the revenue department's equalization ratio. This means assessments generally were slightly lower than market value. The Property's equalized assessment was \$20,500 (\$19,700 assessment ÷ .96 equalization ratio). This equalized assessment should provide an

approximation of market value. To prove overassessment, the Taxpayers would have to show the Property was worth less than the \$20,500 equalized value. Such a showing would indicate the Property was assessed higher than the general level of assessment.

The Taxpayers did not submit any evidence of market value to show that their equalized assessment of \$20,500 exceeded market value. The Town did submit a list of all the T-Hangars that had sold starting in 1988 up through July of 1996. These sales indicate that the assessment is proportional to market value as required by RSA 75:1. Because individuals as they purchased these T-Hangars were purchasing a bundle of rights to a certain hangar including all the condominiums rights and responsibilities, the sales prices inherently reflect individual rights to all the common areas that the Taxpayers said should be deducted from individual assessments. To subtract the common area value would ignore the basic market concept of the consideration reflecting the total bundle of rights being purchased.

The board finds the Taxpayers' comparison to the Hexagon hangars to be inappropriate. Based on the evidence submitted these hangars have different rights and amenities that go with them and therefore are not comparable properties. As the Town noted the Hexagon hangars are older, lower quality and do not have any finished floors. While the Hexagon hangars may be larger and have water available to them, the only market evidence of the Hexagon hangars submitted was the unit owned by Peter Delaney which was purchased by him in December of 1982 for \$13,500. Such market evidence is obviously too dated to be relevant to a 1994 appeal.

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Lastly, the Taxpayers argued that the developer of the T-Hangars, T.C. Development, has received a 5% adjustment for owning several units based on a board's prior decision. (Docket No.: 6704-89PT.) The board in that decision determined that a 5% adjustment was the best evidence submitted as to any quantity discount to be applied to the appellant's property due to its ownership of multiple units. However, for argument purposes, even if that adjustment is improper, it does not relieve the Taxpayers of their burden to show that their Property is disproportionately assessed relative to market value. As discussed above, the Taxpayers did not show that the assessment was excessive relative to the sales that have occurred for T-Hangars.

A motion for rehearing, reconsideration or clarification (collectively "rehearing 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 rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing 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 rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing 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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to William and Justine Fletcher, Taxpayers; and Chairman, Selectmen of Swanzey.

Date: October 18, 1996

Valerie B. Lanigan, Clerk

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