

Raul C. and Loretta Blanche

v.

Town of Hollis

Docket No.: 15979-95PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$275,700 (land \$84,000; buildings \$191,700) on a 2-acre lot with a single-family home (the Property). 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 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 Property is located on a corner lot and when the house was constructed the driveway was built facing Mendelssohn Drive but the Property

was not part of the Mendelssohn Drive development;

(2) the land assessment should be based on the value set for Howe Lane (which was the way it was assessed when vacant) rather than Mendelssohn Drive; and

(3) the assessed value should be \$257,700 or a compromise of \$266,700.

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The Town argued the assessment was proper because:

(1) the Property was reinspected and remeasured as a result of the Taxpayers' assertions that there were errors on the assessment-record card which have been corrected;

(2) when the Property was reinspected, the Town noted that the land was being assessed a Howe Lane site value (a heavily travelled commuter road) when it should have been assessed a Mendelssohn Drive site value; therefore, the land value was corrected;

(3) comparable sales on Mendelssohn Drive support the assessment; and

(4) the Taxpayers stated they could sell the Property for its assessed value.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed. The Taxpayers focused their argument on the site value of the Property arguing that the Town should not have altered it and claimed it should be assessed similar to Howe Lane site assessments. The board finds the Town's actions were appropriate. The Town must annually review its assessments and adjust those that have declined or increased more in value than values generally changed in the Town. RSA 75:8 states:

The assessors and selectmen shall, in the month of April in each year, examine all the real estate in their respective cities and towns, shall reappraise all such real estate as has changed in value in the year next preceding, and shall correct all errors that they find in the then existing appraisal ***.

See also, 73:1, 73:10, 74:1, 75:1. As stated in Appeal of Net Realty Holding Trust, 128 N.H. 795, 799 (1986), a fair and proportionate tax can only be achieved through a constant process of correction and adjustment of assessments. In yearly arriving at an assessment, the Town must look at all relevant factors. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

The board must view the Property in its entirety (land and buildings together) to determine whether an assessment is proper because this is how the market views value. Moreover, the supreme court has held the board must consider a

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taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The Taxpayers submitted no evidence as to the market value of the Property. They merely focused on the site value. To carry their burden, the Taxpayers 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. 214, 217-18 (1985). The board finds the indicated market value of \$270,300 ($\$275,700 \div 1.02$) by applying the Town's equalization ratio to the \$275,700 assessment is reasonable. Further, when asked their opinion of the fair market value of the Property, the Taxpayers stated that \$270,000 to \$275,000 market value was not unreasonable as of April

1995. Therefore, by the Taxpayers' own admission, the assessment was proper.

The Town submitted detailed photographic evidence depicting the Property, the approach to the Property along Howe Lane to Mendelssohn Drive, properties along Mendelssohn Drive and properties along Howe Lane. The Town also submitted evidence of two comparable land sales on Mendelssohn Drive which supported the Town's higher site value. The Property is an impressive home which fits in very well with the other properties on Mendelssohn Drive. The board agrees with the Town that the lower Howe Lane site values are of lower quality homes on a heavily travelled commuter road and are not comparable to the Property. The Property's driveway is on Mendelssohn Drive and it is clear that the Property's site value is reasonable given the Property's location, quality of improvements, quality of neighborhood and sales evidence.

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

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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

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 Raul C. and Loretta Blanche, Taxpayers; and Chairman, Selectmen of Hollis.

Date: June 9, 1997

Valerie B. Lanigan, Clerk

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