

Ned L. Woody

v.

Town of Derry

Docket No.: 15990-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 adjusted assessment of \$144,600 (land \$32,600; buildings \$112,000) on a 1.05-acre lot with a single-family home (the Property). 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. The Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

(1) there are inconsistencies in the assessments of many properties in the neighborhood;

- (2) there are identical houses with varying assessments;
- (3) the house is on the market for \$149,500 and will sell at \$138,000 after the asking price is lowered; and
- (4) the market value of the Property is \$138,000 to \$139,000.

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The Town argued the assessment was proper because:

- (1) all properties in the neighborhood were assessed consistently;
- (2) the Town has an equalization ratio of .99 and a coefficient of dispersion of less than 10 indicating a close relationship between selling prices and assessments throughout the Town;
- (3) the Town reviews all properties on a 5 year cycle and in 1996 the Town found inconsistencies in the application of grades to homes specifically that homes graded B- as a class were underassessed;
- (4) the assessment falls in line with all other B- homes in Town; and
- (5) the estimated market value for the Property as of April 1995 is \$146,500.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove disproportionality. The Taxpayer argued that his Property was assessed disproportionately from neighboring properties; however, the board finds, based on a review of the comparable sales and comparable assessment data submitted at the hearing, that the Taxpayer's assessment was fair and proportionate.

The Town stated that it annually reviewed all property assessments in the Town which included inspecting approximately 20% of the improved

properties each year. The Property was remeasured and inspected in November 1995. A 1995 analysis of sales of similar quality properties was performed which indicated inconsistencies in the application of grades. In 1996, adjustments which resulted from physical description errors were made and abatements issued to those who applied with the Town, the Property being one.

The Town submitted an analysis of all qualified sales of B- quality homes, built in the 1980's, which supported the assessment of \$74.61 per square foot for the subject. Further, the Town analyzed four comparable sales which supported a market value estimate of \$146,500 as of April 1995.

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The Taxpayer stated that the Property was recently listed for sale at \$149,500 but that he intended to drop the asking price to \$138,000. The Property has only been on the market since February 1997 and the Taxpayer indicated he would be reducing the price because his wife had died recently and he wanted to sell it quickly. The board finds that the Taxpayer is motivated to sell the Property quickly and has not truly tested the market in that it has only been listed for 1 month. The market evidence suggests that were the Taxpayer to allow a reasonable time for the Property to be exposed to the market, that the asking price is not unreasonable.

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 1995 level of assessment was 99% 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 \$146,060 (\$144,600 assessment ÷ .99 equalization ratio). This equalized assessment should provide an approximation of market value. To prove overassessment, the Taxpayer would have to show the Property was worth less than the \$146,060 equalized value. Such a showing would indicate the Property was assessed higher than the general level of assessment. The board finds that the Taxpayer did not show overassessment.

To the extent that the Taxpayer argued that some properties may have inaccurate data causing them to be underassessed, the board finds the underassessment of other properties does not prove the overassessment of the Taxpayer's Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayer's assessment because of underassessment on other properties would be analogous to a weights and measures inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than

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having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., id.

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

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 Ned L. Woody, Taxpayer; and Chairman, Board of Assessors, Town of Derry.

Date: April 7, 1997

Valerie B. Lanigan, Clerk