

Wallace and Ileen Matthews

v.

Town of Northwood

Docket No.: 16044-95PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$120,950 (land \$94,350; buildings \$26,600) on a .45-acre lot with a single-family home (the Property). For the reasons stated below, the appeal for abatement is granted.

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 carried this burden.

The Taxpayers argued the assessment was excessive because:

- (1) after negotiations, they purchased the Property for \$49,000 in 1995;
- (2) the seller had an appraisal at approximately the sale price; and

(3) the assessment should be based on the sale price.

The Taxpayers also requested a refund of the filing fee.

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The Town agreed the Property was overassessed given the Property's sale price and other comparables sales prices. The Town asserted, however, the ratio should be 1.45 rather than the revenue department's 1.40 ratio. The Town's agent also explained the situation in the Town concerning the assessing functions.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$68,600, which is based on a market finding of \$49,000 (the Taxpayers' purchase price) times the revenue department's 1.40 equalization ratio. The parties agreed about the Property's market value, but there was disagreement about the appropriate ratio. The board adopts the revenue department's 1.40 ratio. See Appeal of City of Nashua, 138 N.H. 261, 265-267 (1994), (if municipality wants to present a ratio other than the department's ratio, the municipality must carry a burden of proof on the issue).

The Taxpayers also requested a refund of their filing fee. RSA 76:17-c authorizes the board to order municipality to refund a taxpayer's filing fee.

See also TAX 201.39 (a) (board authorized to award costs when appeal is frivolously defended). The board finds the Town should have resolved this matter at the local level given the Taxpayers' purchase price, which was supported by other nearby sales. Therefore, when the Town refunds the

overpaid taxes, the Town shall also refund the Taxpayers' \$65 filing fee.

If the taxes have been paid, the amount paid on the value in excess of \$68,600 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. The Town underwent a general revaluation for tax year 1996. Therefore, this decision only applies to tax year 1995.

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

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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

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Wallace and Ileen Matthews, Taxpayers; and Chairman, Selectmen of Northwood.

Date: April 23, 1997

Valerie B. Lanigan, Clerk

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