

Waldemar and Maria Kondratowicz

v.

Town of Lisbon

Docket No.: 16063-95PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$46,500 (land \$27,300; buildings \$19,200) on a 16.09-acre lot (14.09 acres in current use) with a mobile 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 was 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, however, the board finds the Town's revised assessment to be reasonable and orders an abatement based on that assessment.

The Taxpayers argued the assessment was excessive because:

- (1) one trailer was purchased for \$1,200 in 1988;

- (2) the other trailer was purchased for \$200 in 1980;
- (3) the trailers can only be used for seasonal use;
- (4) trailer dealers told the Taxpayers the trailers were valueless for sale off-site; and
- (5) realtors stated the trailers had no transferable value on site, and the Property might be sold for \$50,000.

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The Taxpayer also stated the Town's comparable sales were superior to the Property.

The Town offered to reduce the trailer assessment by \$5,000. The Town argued the revised assessment of \$41,500 (land \$27,300; building \$14,200) was proper because:

- (1) the \$28,865 equalized value for the trailers, two acres and utilities was reasonable;
- (2) it was consistent with the assessments on comparable properties and with the sales prices on the comparables;
- (3) it included sufficient depreciation considering the trailers' condition;
- (4) the trailers have on-site value; and
- (5) the total equalized value was consistent with the Taxpayers' realtors' opinions.

#### **Board's Rulings**

Based on the evidence, the board finds the Taxpayers did not carry their burden. The board finds the Town's revised assessment is reasonable and supported by the market data submitted by the Town.

To be able to compare the Taxpayers' assessment to the market data submitted by the Town, the ad valorem assessment (without current use) needs

to be considered. The Town's revised assessment has a total ad valorem assessment of \$64,850 for 16+ acres and the joined manufactured homes and a shed.

Assessments must be based on market value. See RSA 75:1. Due to market fluctuations, assessments may not always be at market value. A property's assessment, therefore, is not unfair simply because it exceeds the property's 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 141% as determined by the revenue department's equalization ratio. This means assessments generally were higher than market value. The Property's equalized assessment was

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\$45,993 ( $\$64,850$  ad valorem assessment  $\div$  1.41 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 \$45,993 equalized value. Such a showing would indicate the Property was assessed higher than the general level of assessment. In reviewing the value of the Property, as a whole the board finds the estimated market value of approximately \$46,000 is reasonable and supported by the evidence. The Taxpayers testified that two realtors stated the market value should be slightly under \$50,000. The Town's sales, while generally of newer and better quality manufactured homes, support the assessment especially considering the Property's acreage is larger than the sales.

If the taxes have been paid, the amount paid on the value in excess of \$41,500 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule

TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1996. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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

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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

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Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Waldemar and Maria Kondratowicz, Taxpayers; and Chairman, Selectmen of Lisbon.

Date: March 18, 1997

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Valerie B. Lanigan, Clerk

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