

Kevin and Sherry Daverin

v.

Town of Deerfield

Docket No.: 16085-95PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$196,800 (land \$72,100; buildings \$124,700) on a 50-acre lot with a single-family house (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 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.

The Taxpayers argued the assessment was excessive because:

- (1) the Taxpayers purchased the property for \$121,000 in December 1995;
- (2) a November 1995 bank appraisal estimated the market value to be \$143,000;

however, the bank wants to set the highest value possible;

(3) the basement is wet almost year round and a sump pump is necessary;

(4) there are PSNH power lines running through the Property;

(5) there are higher costs to maintain the septic system because sewerage is pumped up to the holding tank and leach field and the line freezes on

occasion;

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(6) the 24 X 24 room is really an unfinished three-season room (converted garage) with no heat; and

(7) the market value of the Property as of April 1995 was \$121,000; therefore, the assessment should be \$164,560 ($\$121,000 \times 1.36$ equalization ratio).

The Town argued the assessment was proper because:

(1) The Taxpayers purchased the Property from a bank after foreclosure;

(2) the Taxpayers' appraisal supports the assessment; and

(3) the Town's appraisal indicates that the Property is properly assessed.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed. The Taxpayers testified the Property's purchase price was \$121,000 in December 1995. While this is some evidence of the Property's market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980).

However, where it is demonstrated that the sale was an arm's-length market sale, the sales price is one of the "best indicators of the property's value."

Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). However, in this case, the Taxpayers' purchase was not a fair market value purchase because the seller was a bank who had foreclosed on the prior owner. The board has

consistently held that bank sales do not meet the requirements of arm's-length transactions. "An arm's-length transaction is _[a] transaction freely arrived at in the open market, unaffected by abnormal pressure or by the absence of normal competitive negotiation as might be true in the case of a transaction between related parties._ B. BOYCE, REAL ESTATE APPRAISAL TERMINOLOGY 18 (REV. ED. 1984)." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988).

Lending institutions are generally more motivated to liquidate their foreclosure portfolio than to hold and manage property for its maximum return.

Such actions are not normal market motivations and generally disqualify those transactions as arm's-length. See also Society Hill Merrimack Condominium Association & a. v. Town of Merrimack, 139 N.H. 2534, 3255 (1994). Therefore,

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the sale cannot qualify as a market sale. Further, the Taxpayers presented a November 1995 appraisal report (prepared for the bank) which showed that three comparable properties, sold in July and August of 1995, when adjusted for differences in lot size, house size and other features, supported the \$144,700 equalized value determined by the Town.

The issue always before the board in any appeal is whether the property is disproportionally assessed. Disproportionality is determined by examining market evidence, estimating market value of the property and then relating that market value to the general level of assessment within the community. For the 1995 tax year, the department of revenue administration determined that the general level of assessment was approximately 136% according to its ratio study and equalization ratio. Based on this ratio the indicated market value of the Taxpayers' property is \$144,705 ($\$196,800 \div 1.36$). The

indicated value is supported both by the Taxpayers' bank appraisal and the Town's appraisal.

The Taxpayers raised concerns about certain errors in the assessment; specifically, the fact that the 24 X 24 converted garage had no heat and no carpeting. However, the Taxpayers did not show these errors resulted in disproportionality. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985), quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899). Additionally, regarding the Taxpayers' other concerns (i.e. water in the basement, difficulties with septic system and PSNH easement over the land), while they may have some effect on market value, the Taxpayers provided no evidence to support any reduction in value.

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 Kevin and Sherry Daverin, Taxpayers; and Chairman, Selectmen of Deerfield.

Date: March 18, 1997

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the Taxpayers' April 18, 1997 motion for rehearing, which is denied.

RSA 541:3 requires parties to file a rehearing motion in writing with the board within thirty (30) days of the board's decision. The decision was dated March 18, 1997. Thus, the rehearing motion had to be filed no later than April 17, 1997. The board does not have the authority to deviate from the statutorily created deadlines. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (Board cannot deviate from statutes.), Appeal of Roketenetz, 122 N.H. 869, 870 (1982) (Timely filing requirement is a jurisdictional prerequisite.), Arlington Sample Book Company v. Board of Taxation, 116 N.H. 575, 576 (1976) (Board cannot even deviate from deadlines when there has been an accident, mistake or misfortune.), see also Daniel v. B & J Realty, 134 N.H. 174, 176 (1991). Given the clear law, the board must treat the Taxpayers' motion as untimely.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Valerie B. Lanigan, Clerk

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Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Kevin and Sherry Daverin, Taxpayers; and Chairman, Selectmen of Deerfield.

Date: May 7, 1997

Valerie B. Lanigan, Clerk

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