

Roland E. Guichard, Jr.

v.

Town of Merrimack

Docket No.: 16147-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$169,500 (land \$36,500; buildings \$133,000) on a .25-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) the assessment exceeded the assessment on 14 White Wood an adjacent and identical comparable (The Property was assessed at a higher grade and at a

higher per-square-foot value);

(2) the Property was purchased in August 1995 for \$155,000;

(3) new construction was selling for more than resales, and the Property was a resale; and

(4) the assessment should have been \$160,000.

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The Town argued the assessment was proper because:

(1) the Taxpayer purchased the Property from a relocation company;

(2) fifteen sales in the subdivision supported the assessment and supported the general assessment methodology;

(3) the 1995 assessment on 14 White Wood was a mistake and was corrected for 1996; and

(4) an April 1995 appraisal valued the Property at \$169,000.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not prove the Property was overassessed for the following reasons.

The Taxpayer purchased the Property from a relocation company, and this raises questions about whether the transaction was for market value. When doubt is raised, the board looks for other sales of comparable properties. The Town submitted several sales of similar properties in the subdivision that supported the assessment. The Taxpayer did not present any supporting market information such as other sales or an appraisal.

The Taxpayer also relied on the assessment on 14 White Wood. The Town stated that assessment was incorrect and was corrected. Given the sales and the assessments on other properties, the board places no weight on 14 White

Wood. 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 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.

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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

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Roland E. Guichard, Jr., Taxpayer; Jay L. Hodes, Esq., Counsel for the Town of Merrimack; and Chairman, Assessors of Merrimack.

Date: May 8, 1997

Valerie B. Lanigan, Clerk

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