

Kevin E. and Marilyn Murphy

v.

City of Nashua

Docket No.: 16363-95PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$158,600 (land \$42,200; buildings \$116,400) on a .49-acre lot with a single-family home (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 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) in comparison to the neighbors' properties, the Property is smaller, is not buffered and has easement and access points;

- (2) adjacent homes and Coburn Woods development homes are superior to the subject;
- (3) the Taxpayers were misled as to the boundaries of the Property and the encroachment on the adjoining lot impacts its value; and
- (4) the proper assessment should be \$140,000.

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The Town argued the assessment was proper because:

- (1) the Taxpayers agree the correct size of the lot is 21,540 square feet which is what is being assessed;
- (2) an analysis of comparable sales with similar easements supports the assessed value; and
- (3) the Taxpayers presented no market evidence to support their value and have not carried the burden to prove overassessment.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove disproportionality. The Taxpayers did not present any specific evidence of the Property's fair market value. The Taxpayers only testified in general terms of the Property's market value and market values in the neighborhood. To carry their burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessment generally in the City. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985). Further, the Taxpayers did not present any evidence as to the cost to cure (obtaining an easement) the encroachment

of some of the Property's landscaping and driveway onto the adjoining lot 1024. Based on the assessment-record card, the City assessed the Property based on its deeded dimensions and not on any encroachment on lot 1024.

The board finds the City's assessment analysis (Municipality Ex. A) reasonably supports the assessment of \$158,600. The board found no evidence was submitted to support the Taxpayers' claim that two of the City's "contemporary" style comparables were in fact of a significantly better quality than the Property. The photographs submitted by the City and the assessment-record cards describe slightly above average dwellings for both the Property and the two contemporary comparable sales. The two additional comparable sales used by the City were in a slightly different and inferior

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neighborhood; however, the City did not make any positive adjustments to those sales for their slightly inferior location. Consequently, if anything, the indicated values of those two sales may understate the Property's market value.

Prior to the close of the hearing, the board neglected to rule on Taxpayers' Exhibits 1 and 2 which were marked for identification purposes only. The board rules to accept them as full exhibits to be given their appropriate weight.

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

Michele E. LeBrun, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Kevin E. and Marilyn Murphy, Taxpayers; and Chairman, Board of Assessors, City of Nashua.

Date: June 17, 1997

Valerie B. Lanigan, Clerk

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