

Joseph N. Gildea, Jr.

v.

Town of Ossipee

Docket No.: 16497-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 adjusted assessment of \$61,800 (land \$12,500; buildings \$49,300) on a .225-acre lot with a building containing a store and unfinished apartments (the Property). The Taxpayer also owns, but did not appeal, 6 other properties in the Town with a combined, \$160,400 assessment. 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 Property is a 12-room 1860's farmhouse which at one time had 4 apartments and currently only 2 rooms are occupied by a craft shop;

(2) the remainder of the Property is under construction and has no heat or electricity;

(3) the Town removed the 25% UC (unfinished construction) depreciation on the Property after viewing it, and only increased the condition factor by 15%;

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(4) the original UC depreciation of 25% and condition depreciation of 10% should be reinstated for a proper assessment of \$52,500; and

(5) the market value as of April 1995 is in the low \$50,000's.

The Town argued the assessment was proper because:

(1) the replacement cost of the building should not have been depreciated for both condition and unfinished construction; and

(2) comparable sales and comparable assessments support the assessed value.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed. The Taxpayer did not present any credible evidence of the Property's fair market value. To carry his burden, the Taxpayer 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 Town. 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 Taxpayer submitted no photographs. For the board to make a determination as to whether the condition adjustment was appropriate,

photographs are essential to show the building and the condition of the interior. Given the fact that no evidence of the Property's market value was submitted, no photographs and no estimated cost to make the Property liveable, the board has no basis to change the depreciation applied by the Town. The Town based its depreciation on an interior inspection of the Property using the guidelines set in the Town. The board agrees that whether you identify the depreciation as "condition" or "unfinished construction" that it would be inappropriate for the Town to depreciate for both. Given the fact that the Taxpayer would be required to get building permits before any additional work is done to the house, the Town's decision to categorize the adjustments as depreciation due to condition is reasonable.

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The Taxpayer stated the Property was worth in the low \$50,000's as of April 1995. 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 106% as determined by the revenue department's equalization ratio. This means assessments generally were higher than market value. The Property's equalized assessment was \$58,300 (\$61,800 assessment ÷ 1.06 equalization ratio). This equalized assessment should provide an approximation of market value. To prove overassessment, the Taxpayer would have to show the Property was worth less than the \$58,300 equalized value. Such a showing would indicate the Property was assessed higher than the general level of assessment. The Taxpayer did

not make such a showing.

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.

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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 Joseph N. Gildea, Jr., Taxpayer; Alice MacKinnon, Agent for the Town of Ossipee; and Chairman, Selectmen of Ossipee.

Date: April 10, 1997

Valerie B. Lanigan, Clerk

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