

Thomas and Barbara Mulhern

v.

Town of Thornton

Docket No.: 16532-95PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$121,100 (land \$37,000; buildings \$84,100) on a 43,560 square-foot 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) an abutting property has a larger lot area but a lower site assessment;
- (2) the abutting property appears to have a larger building but the assessment

again appears to be lower than the Property's building assessment; and

(3) the assessment should approximate the selling price of \$91,000.

The Town argued the assessment was proper because:

(1) the assessment-record card for the abutting property, introduced by the Taxpayers, was incorrect for the year under appeal;

(2) the original MMC revaluation had some inconsistencies; and

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(3) the Town is currently undergoing a complete revaluation by the department of revenue administration and this should cure any inconsistencies or inequities.

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

Based on the evidence, the board finds the Taxpayers did not show the Property was overassessed.

The Taxpayers have the burden of proof to show overassessment. While the board often scrutinizes assessment methodology, the board focuses primarily on market information, specifically, whether a property's market value was less than the property's equalized assessment. The Taxpayers did not present any credible evidence of the Property's fair market value. 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 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). The Taxpayers testified that the abutting property owned by Dr. Martin T. Hanley (Hanley property) was significantly more valuable than their Property in that it had a larger lot

size and a larger dwelling area. The Taxpayers testified that although the Hanley property was better in all aspects, it was assessed at a lower value than their Property. However, the assessment-record card for the Hanley property provided by the Taxpayers was the 1996 assessment-record card, and therefore, not relevant to the 1995 appeal. The Taxpayers should have provided the board with the 1995 assessment-record card for the Hanley property.

In rebuttal, the Town testified that Dr. Hanley did not allow them access to inspect the interior of his property and that the Hanley property was incomplete and unfinished at the time of the assessment-record card being filled out.

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In conjunction with their discussion on lot values, the Taxpayers submitted assessment-record cards for other vacant similarly-sized tracts of land that had sold in the Town of Thornton to show the overassessment of their lot. The Town testified, however, that the assessment-record cards submitted were for vacant tracts of land rather than properties that had been developed, and therefore, were not comparable and not given much weight. The board finds that the assessment-record cards submitted did not provide enough information to make a conclusive finding.

The Taxpayers testified that they purchased the Property in October 1994 at a purchase price of \$91,000. 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). Calculating the assessment, based on the purchase price, by multiplying the selling price of the Property by the 1994 equalization ratio as determined by the department of revenue administration indicates an assessed value of approximately \$128,300 (\$91,000 x 1.41) for the Property. This calculated assessment is greater (approximately 6%) than the actual assessed value, and thus, indicates the assessed value is not excessive compared to the equalized sales price.

The Town testified that the assessment work done in 1989 by the previous mass appraisal company, MMC, had significant inconsistencies throughout the Town and that a current town-wide revaluation is ongoing. The Town indicated that it was confident that the inconsistencies and inequities on the previous assessments would be corrected after the ongoing revaluation is completed.

For the above reasons, the board finds the Taxpayers failed to prove overassessment of their Property.

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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

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas and Barbara Mulhern, Taxpayers; and Chairman, Selectmen of Thornton.

Date: June 19, 1997

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Valerie B. Lanigan, Clerk

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