

Charles and Adrienne Schelberg

v.

Town of Milford

Docket No.: 16078-96EX

DECISION

The "Taxpayers" appeal, pursuant to RSA 75:14, the "Town's" May 22, 1996 denial of the Taxpayers' request that the Taxpayers' "Property" be specially assessed, under RSA 75:11, as a residence in a commercial zone. The Property consists of a 4.0-acre lot with a house and attached apartment assessed at \$338,300 (land \$203,800; buildings \$134,500) (the Property). The apartment unit consists of a one-bedroom apartment with an eat-in kitchen, a living room, another general room, a bath, a separate entryway and a separate heating system. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing they were entitled to the statutory exemption for the year under appeal. The Taxpayers failed to carry this burden.

The Taxpayers argued the Town's exemption denial was improper because:

- (1) the Property should be valued based on its current use as a residence;
- (2) the Taxpayers purchased the Property as their principal residence with an

in-law apartment, and the Property's character, as a residence, does not change merely because there is an in-law apartment;

(3) the statute is broad enough to encompass a situation where there was a legitimate family purpose for constructing a second living unit; and

Page 2

Schelberg v. Town of Milford

Docket No.: 16078-96EX

(4) although the apartment is now being rented, the purpose and intent of the Taxpayers must be considered and the land should be assessed as residential land.

The Town argued its exemption denial was proper because:

(1) the assessment was adjusted for the fact that the Property is not in a strictly commercial area;

(2) the Taxpayers are receiving income from the Property;

(3) the Property has commercial value and could be sold as such;

(4) all two-family homes in commercial zones were assessed consistent with the subject with the exception of a two-family home, jointly owned and occupied by a mother on one side and her children on the other; and

(5) RSA 75:10 defines "residence" as a principal place of abode "and for no other purpose" and the Town interprets the law to mean a two-family property does not qualify.

Board's Rulings

Based on the evidence, the board finds the Property did not qualify as a residence in a commercial zone.

RSA 75:11 I authorizes property owners to apply to the municipality "for a special appraisal of the residence *** based upon its value at [the

property's] current use as a residence." The Taxpayers applied for such special appraisal. The Town denied the application, asserting the Property was not a "residence" as defined in RSA 75:10 (Supp. 1996), which states:
II. "Residence" means the real estate which a person owns and occupies as the person's principal place of abode, and for no other purpose, together with land or building appurtenant thereto, including manufactured housing if used for such purpose.

The Taxpayers are not "occupying" the entire Property. See RSA 75:10 II. Rather, the Taxpayers occupy part of the Property while the tenant occupies another part. Furthermore, the Property is being used as rental property, and thus, the Property is not being used solely as a residence. See RSA 75:10 II ("for no other purpose ***."). Therefore, the Property does not qualify under RSA 75:11.

Page 3
Schelberg v. Town of Milford
Docket No.: 16078-96EX

The board notes that RSA 75:11 was enacted to allow property owners to avoid paying taxes based on a higher commercial rate when the property was currently only being used as a residence. In other words, the lower rate would be applied provided a property's current use was not taking advantage of the commercial zoning. The Taxpayers' Property is currently taking advantage of the commercial zoning.

Based on the above purpose and reading of the statute, the board finds the Property was not qualified for assessment under RSA 75:11, and therefore, the Taxpayers' appeal is denied.

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.

Page 4
Schelberg v. Town of Milford
Docket No.: 16078-96EX

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

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 Henry F. Spaloss, Agent for Charles and Adrienne Schelberg, Taxpayers; William R. Drescher, Esq., Counsel for the Town of Milford; and Chairman, Selectmen of Milford.

Date: March 21, 1997

Valerie B. Lanigan, Clerk

0006