Donald M. and Donna M. Panciera

v.

Town of Ellsworth

Docket No.: 16636-96PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of $120,900 (land $17,000; buildings $103,900) on a 2.0-acre lot with a dwelling (the Property). For the reasons stated below, the appeal for abatement is granted.

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 carried this burden.

The Taxpayers argued the assessment was excessive because:
(1) the Taxpayers purchased the Property on August 30, 1996 for $95,000;
(2) the previous owner was from Europe and was only at the Property a few

weeks each year and, consequently, did not review the assessment regularly;

(3) the assessment for the tax year under appeal was set with only an exterior inspection; and

(4) after an interior inspection the Town revised the assessment downward for 1997.

The Town did not have a representative at the hearing.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $98,600 (land $17,000; buildings $81,600).

Normally, the board would have found the $120,900 assessment to be proportional based on the $95,000 purchase price as an indication of market value and the Department of Revenue Administration's (DRA) 1996 equalization ratio of 130%. Applying the ratio to the assessment provides an indicated market value of $93,000 ($120,900 ÷ 1.30) which closely comports with the Taxpayers' purchase of the Property in August of 1996 for $95,000. Normally, this function of applying the DRA's equalization ratio to market value results in proportionate assessment. Appeal of Andrews 136 N.H. 61, 64 (1992) (In order to achieve proportional assessments, all taxpayers must be assessed at the same ratio.)

However, two facts in this case weigh heavily in ordering an abatement to the $98,600 level.

1) The 1996 assessment of $120,900 was based on an outside inspection of the Property. The former owner resided in England and the appraiser had been unable to obtain access to value the Property. After the Taxpayers filed an

appeal in this case, the Town sent its appraiser out to view the interior of the Property. The appraiser for 1997 recommended a lower assessment on the building reflecting corrections based on the appraiser's interior view. (The 1997 assessment-record card was submitted as Taxpayers' Exhibit #1.) The board finds the physical description and data is more accurate on the subsequent assessment-record card than on the one under appeal. Thus, the board gives significant weight to the assessment conclusion based on those corrections.

2) For several reasons, the board places little weight on the 130% ratio for 1996. First, there was a paucity of sales in all three years in which to statistically derive a reliable indication of the level of assessment within the Town for any of the years and for there to be any confidence level in the

variations between the years. Second, the DRA's 1996 equalization ratio of 130% was based on only four sales, one of which was the Taxpayers' Property. The 1995 equalization ratio of 100% was based on only one sale and the 1997 equalization ratio of 114% was based on only five sales. Third, the representativeness of the sample is inherently in question given the sample's small size. Fourth, in 1996 the Property was one of four sales. If the 1996 assessment had been corrected, as it was for 1997, it is likely the Town ratio would have been different. This circular calculation highlights the unreliability of an equalization ratio based on such a small sample size.

In short, the question to be asked is: does the ratio of 104%, based on the revised assessment of $98,600 and the sale price of $95,000 ($98,600 ÷ $95,000), indicate a reasonable level of assessment? The board finds it does

based on the fact that all evidence supports the sale was arm's-length, the original assessment contained factual errors that were subsequently corrected based on an interior review and the ratios for the tax year and adjacent years are suspect based on the small size of the samples.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of $98,600 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1997. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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, <u>not the date this decision is received</u>. 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 Donald M. and Donna M. Panciera, Taxpayers; and Chairman, Selectmen of Ellsworth.

Date: August 21, 1998

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Valerie B. Lanigan, Clerk

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