

Children's Asset Trust

v.

Town of Moultonborough

Docket No.: 17276-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 adjusted assessment of \$368,200 (land \$240,000; buildings \$128,200) on a 13,800 square foot lot with a single-family house (the Property). The Taxpayer also owns, but did not appeal, three other properties in the Town with a combined, \$178,700 assessment. For the reasons stated below, the appeal for abatement is granted to correct the size of the Property.

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 argued the assessment was excessive because:

- (1) the lot size on the assessment-record card is incorrect leading to an

incorrect assessment on the land portion of the Property;

(2) the lot size and configuration restricts the lot utilization for increased development; and

(3) the correct land assessment should be \$175,000 to \$200,000.

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The Town argued the assessment was proper because:

(1) the Property was assessed, during the revaluation, using the same methodology as all other properties in the Town; and

(2) the Taxpayer did not provide any evidence of the Property's market value.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$343,800 which is based on a recalculation of the size of the lot from .40-acre to 13,800 square feet (.32-acre). The board finds no additional abatement is warranted because the Taxpayer failed to present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer should have made a showing of the Property's fair market value which 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 Town testified that the assessment was arrived at using the same methodology employed in assessing other waterfront properties in the Town. This testimony is evidence of proportionality. See Bedford Development

Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982). The Town agreed to correct the size of the Property once the Taxpayer provided a copy of the deed. The board ordered the Town to make the calculation and present the revised value to the board. The board finds this revised value to be reasonable and finds no further adjustments are warranted.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$343,800 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

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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, 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

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 Children's Asset Trust, Taxpayer; Mary Pinkham-Langer, representative for the Town; and Chairman, Selectmen of Moultonborough.

Date: October 27, 1998

Valerie B. Lanigan, Clerk

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Pamela Fillmore 1992 Trust

v.

Town of Loudon

Docket No. 16950-96LC

ORDER

This order responds to the "Taxpayer's" rehearing motion, which is denied. The motion did not demonstrate that the board erred in its decision, and thus, the motion failed to show any "good reason" to grant a rehearing. See RSA 541:3.

To appeal this matter, an appeal must be filed with the supreme court within thirty (30) days of the clerk's date below. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I certify that copies of the within Order have this date been mailed, postage prepaid, to Timothy E. Britain, Esq., counsel for the Taxpayer; and Chairman, Selectmen of Loudon.

Date: December 16, 1998

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Valerie B. Lanigan, Clerk