

William M., Esther and Reuben Murray

v.

City of Concord

Docket No.: 17499-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1997 assessment of \$136,600 (land \$63,100; buildings \$73,500) on a cape-style home on a 4.10-acre lot (the "Property"). The Taxpayer also owns, but did not appeal, a cape-style home on a 1.40-acre lot with an assessment of \$116,100. 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 land portion of the assessment was excessive because the frontage assessments on Shaker Road and Mountain Road are improper because other properties with similar excess frontage were not assessed for the frontage.

The City argued the assessment was proper because:

- (1) a summary appraisal report prepared by the City indicates the Property had a market value of \$170,000;
- (2) based on this estimate, the Property, if anything, was underassessed;
- (3) the Property had the potential of subdivision on both Mountain Road and Shaker Road; and
- (4) a lot was subdivided later in 1997 on Mountain Road.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to carry their burden to show that the entire Property was disproportionately assessed.

The Taxpayers focused solely on their land assessment relative to excess frontage on Mountain Road and Shaker Road. The Taxpayers did not present any evidence on the market value of the Property as a whole. The board finds the Property was reasonably assessed, and possibly, underassessed at \$136,600 given the Property's potential for subdivision. The City's market analysis supports that the Property was, at the very least, not overassessed.

The Taxpayers' sole argument was that other properties that also had subdivision potential did not have the excess front footage assessed in a similar fashion. The Taxpayers showed several examples, specifically, one not in current use and several in current use to support their claim. The Taxpayers' evidence is some indication that possibly similar properties

may be underassessed. However, underassessment of other properties does not prove the overassessment of the Taxpayer's Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399,

401 (1987). For the board to reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights and measures inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., id.

The board finds the City's methodology of valuing the excess 3.1 acres and frontage is appropriate. This is borne out by the Taxpayers subsequently subdividing a lot on Mountain Road and selling it for \$35,000.

In short, the board finds the Taxpayers presented no convincing evidence that the assessment as a whole was improper. However, the Taxpayers did present some evidence that the City should pursue in reviewing whether the methodology of assessing excess frontage has been consistently applied to other similar parcels. Also, the City should review its current-use records to determine if the curtilage (CUB 301.04) (land around land and buildings that does not qualify for current use) has been properly delineated and assessed on other parcels. As indicated at the hearing, the mass appraisal process strives for proportionality by consistent application of assessment methodology. The City should review its properties of similar types to assure that this has occurred.

Page 4
Murray v. City of Concord
Docket No.: 17499-97PT

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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Page 5
Murray v. City of Concord
Docket No.: 17499-97PT

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to William M., Esther and Reuben Murray, Taxpayers; and Chairman, Board of Assessors of Concord.

Date: April 30, 1999

0006

Lynn M. Wheeler, Clerk