

Theresa J. Love and Mark Bender

v.

Town of Bridgewater

Docket No.: 17523-97PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1997 adjusted assessment of \$74,400 (land \$47,300; buildings \$27,100) on 3.58-acre lot with a mobile 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) the Property is accessed by a right-of-way belonging to an abutter (steep embankments prohibit access via River Road) and the lot is located on a curve;

- (2) the assessment on the mobile home has not been properly depreciated for its age;
- (3) an appraiser estimated the site value to be \$16,000; and
- (4) the proper assessed value should be \$45,500.

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The Town argued the assessment was proper because:

- (1) the Property was inspected at the request of the board of selectmen in January 1999 at which time it was discovered that a deck and a shed had not been previously assessed and also that the home was accessed by a right-of-way across the neighbor's property; the assessment was decreased by \$3,800 as a result of the inspection;
- (2) the lot is level where the home and garage are sited and the access and steep topography have been adjusted for from the base value of the land;
- (3) an analysis of assessments of comparable land and buildings shows how similar land has been assessed in the neighborhood, compares land and mobile home assessments, and mobil home assessments which supports the assessed value of the Property;
- (4) the original 1972 cost of the mobile home is not relevant to its 1997 assessment and the Town's depreciation schedule was developed from an extraction of sales at the time of the revaluation and has not changed since that time; and
- (5) the Taxpayer's appraisal, when equalized by the 1997 ratio of 130% indicates the assessment is fair.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed. The Taxpayer also argued at the hearing that she and her mother, Belle Cyr (the previous owner), had received no response from the Town to their requests for the RSA 72:39-a elderly exemption and the RSA 72:28 veterans' exemption. On October 14, 1998, the board's clerk received a telephone call from the Town (Terry Murphy) advising that the Town would be granting the elderly exemption for Belle Cyr and the veteran's exemption. Prior to issuing this decision, the board requested the Town confirm this in writing. On February 24, 1999, the Town advised that the Taxpayer was notified in writing on October 28, 1998, that the request for Belle Cyr's 1997 elderly exemption was approved "pending a completed

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application indicating income and asset levels" and the 1998 veteran's exemption had been approved and a rebate was being processed. This matter being resolved, the board needs only to address its reasons for denying an abatement.

The Taxpayer submitted a January 1999 appraisal in the amount of \$60,000. However, the Taxpayer wanted the board to rely solely on the appraiser's \$16,000 estimate of site value ignoring the balance of the appraisal. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted.

See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The board finds the appraiser's methodology was sound, the value was supported by three comparable sales which were adjusted for location, year and condition of the home, gross

living area, additions, and site value. The appraiser based her opinions on the market and provided ample justification for the adjustments made to the comparables to value the Property. The board finds the appraisal supports the assessed value of the Property when equalized by the department of revenue administrations 1997 ratio of 130% ($\$74,400 \div 1.30 = \$57,230$).

The Taxpayer asked the board to find a market value of \$35,000 based on a land value of \$16,000 and building value of \$18,875. The board finds the Taxpayer has provided no credible evidence to support such a finding. The board finds based on the Town's evidence, the Taxpayer's appraisal and the board's own judgment and experience¹, that the assessment is fair and proportionate.

The Taxpayer requested the board order costs as a result of filing this appeal. The board denies this request. The board's authority to assess costs

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is contained in two statutes: (1) RSA 76:17-b, which states, "(w)henever, after taxes have been paid, the board of tax and land appeals grants an abatement of taxes because of an incorrect tax assessment due to a clerical error, or a plain and clear error of fact, and not of interpretation, as determined by the board of tax and land appeals, the person receiving the abatement shall be reimbursed by the city or town treasurer for the filing fee paid under RSA 76:16-a I."; and (2) RSA 71-B:9, in part, which states, "(c)osts may be taxed as in the superior court." Because no abatement was

¹ The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33 VI; Appeal of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

granted in this case, no award for costs is appropriate.

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

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Certification

I hereby certify that a copy of the foregoing decision has this date

been mailed, postage prepaid, to Theresa J. Love and Mark Bender, Taxpayers; Diana G. Calder, Agent for the Town of Bridgewater; and Chairman, Selectmen of Bridgewater.

Date: March 26, 1999

Valerie B. Lanigan, Clerk

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