

Michael and Kathleen Connors

v.

Town of Lancaster

Docket No.: 17537-97PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1997 adjusted assessment of \$48,931 (land \$15,750; current use \$3,781; buildings \$29,400) on a 38.1-acre lot (37.1 acres in current use; 1 acre NICU) with a single-family 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 Town increased the assessment for "gradual improvements" when in fact

the Property was not improved in any way during 1996 or 1997;

(2) after an inspection of the Property, the Town abated \$2,100 of the \$3,000 increase in assessment; and

(3) the additional \$900 increase in assessment should also be abated.

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The Town argued the assessment was proper because:

(1) in an attempt to treat everyone fairly, all incomplete properties are reviewed annually and adjusted accordingly;

(2) the Town had not done an interior inspection of the Property in several years; therefore, earlier improvements to the Property may not have been picked up;

(3) as a result of the Taxpayers' application for abatement, the Town performed an interior inspection and made appropriate adjustments to reflect the condition of the Property;

(4) a sale of a similar type property sold in June 1997 for \$47,000 which supports the assessed value;

(5) the Taxpayers presented no evidence of overvaluation or disproportionality either before the Town or the board; therefore, no abatement is warranted; and

(6) the assessment is based on the Town's interior inspection and is fair and proportionate.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed. The thrust of the Taxpayers'

argument was that the Town increased the assessment for "gradual improvements" yet no improvements have been made to the Property since 1995. The Town stated that an interior inspection had not been done since sometime around the purchase of the Property in 1993. The Taxpayers made significant improvements to the Property from 1993 to 1995 and the Town, without the benefit of an interior inspection, had apparently not accounted for some of the improvements and condition of the Property. Upon inspecting the interior of the Property, the Town made the appropriate revisions to the assessment-record card. These revisions ultimately reduced the 1997 assessed value by \$2,150.

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The Taxpayers did not present any credible evidence of the Property's fair market value. To carry their burden, the Taxpayers should have made a showing of the Property's fair market value. This 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). Further, the Taxpayers stated in closing that the assessment was probably fair, they could not insure the Property for its assessed value and they would not be able to build the Property for what it is assessed for. Their main concern was they felt their questions were not answered by the Town in a timely manner. The Taxpayers requested the board order the Town to refund the \$65 filing fee. The board understands the Taxpayers' frustrations and urges the Town to be more diligent in answering taxpayer concerns; however, the board has no

alternative but to deny the Taxpayers' abatement because there is no finding of overassessment. Because no abatement is ordered by the board, the Taxpayers are not entitled to reimbursement of the filing fee.

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

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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 that a copy of the foregoing decision has this date been mailed, postage prepaid, to Michael and Kathleen Connors, Taxpayers; and Chairman, Selectmen of Lancaster.

Date: March 12, 1999

Valerie B. Lanigan, Clerk

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