

Laverne D. Horne

v.

City of Keene

Docket No.: 17758-98PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1998 assessment of \$107,800 (land \$15,800; buildings \$92,000) on a single-family home with a small apartment attached on a .25-acre lot (the "Property"). For the reasons stated below, the appeal for abatement is granted.

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 carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the garage is inaccurately described as a two car structure;
- (2) the kitchen has not been completely remodeled, only cosmetic painting and papering has been done;

- (3) there are only two, narrow, unheated, enclosed porches;
- (4) the laundry room is part of the guest bedroom and not a separate room;
- (5) the City's actions equate to selective assessing as the abutting properties, which are comparable, did not receive a proportionate increase; and
- (6) the Property's market value on April 1, 1998 was between \$80,000 and \$85,000.

The City argued the assessment was proper because:

- (1) the Property is far superior to the neighboring properties;
- (2) the Property received significant updating after its purchase by the Taxpayer;
- (3) a depreciation factor error was carried forward for many years on the assessment-record card.

When it was corrected and the assessment was adjusted for the improvements made to the dwelling, the Property's assessment increased more than those of the abutting properties; and

- (4) given the 1997 purchase price of \$109,000 and the City's equalization ratio of .99, the Property is equitably assessed.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$97,000. This finding is based on a negative 10% adjustment for several factors.

First, the board finds the Taxpayer's purchase of the Property was not an arm's-length transaction. To be an arm's-length transaction, the Property should have received proper market exposure and neither party should have been under any duress to buy or sell. The Taxpayer testified she was under some duress, after the death of her husband, to find a property that was more manageable for her. It was necessary for her to relocate to a portion of the City where she would be within walking distance of municipal services. Additionally, the Taxpayer was under

some duress to find a new home as the sale of her previous dwelling occurred quickly and she had been living with her daughter in the interim. The Property she purchased was never put on the market, and did not receive typical exposure to other potential purchasers. The realtor that apparently sold her previous home knew of the Property becoming available and facilitated the purchase by the Taxpayer. Although the board was given the original asking price (\$119,000), no testimony was presented as to how this price was determined or who made the determination. On page 5 of Municipality Exhibit A, the City states "... Assessment staff concluded that something other than market conditions commanded a sale price of \$109,000" This is some indication that the sale was not an arm's-length transaction.

Secondly, the board finds there are some inaccuracies on the assessment-record card that caused the assessment to be incorrect. The description of the garage as a two-car structure is unreasonable. On the assessment-record card, the garage is listed as a 16' x 28' structure. The board heard testimony that the door to the garage is 14-feet wide, however, the board finds that parking two average-sized vehicles in a structure that is only 16 feet wide would be unreasonable and would not allow for any maneuvering of the vehicles or pedestrians to safely utilize the structure, therefore, the board finds that a more accurate description of the garage would be as an oversized, one-car facility. Further, the board finds the City's description of some of the interior improvements to be inaccurate. The Taxpayer testified, and the City did not refute, the fact that the kitchen, although having been recently papered and painted, did not receive new cabinets or other major structural modifications. Similarly, the bathroom in the main portion of the house had been papered and painted, but not remodeled in another fashion. In the City's description of the Property on page 6 of Municipality Exhibit A, the laundry room is described as being newly

remodeled, however, the Taxpayer testified the laundry area is actually in a portion of the guest bedroom and not a separate room. For all of these reasons, the board finds the description of the Property, as proffered by the City, is inaccurate.

Contrary to the Taxpayer's assertion, the board does not find the City engaged in spot assessing. The City testified the adjustment to the assessment was made because of an annual review of all properties and the fact that the Property transferred and received some building permits for remodeling. It is proper for the City to review properties within its jurisdiction that have transferred or received permits for interior or exterior remodeling. In fact, they are obligated to do so.

While the board has reduced the assessment by 10%, it is no one, single factor or a combination of calculations that caused the board to determine the revised assessment, rather it is a matter of judgment and experience. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence). The board has not allocated the assessed value between land and buildings and the City should make this allocation in accordance with its assessing practices.

If the taxes have been paid, the amount paid on the value in excess of \$97,000 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 City has undergone a general

reassessment, the City shall also refund any overpayment for 1999. Until the City undergoes a general reassessment, the City 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, 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 that a copy of the foregoing decision has this date been mailed, postage prepaid, to Laverne D. Horne, Taxpayer; and Chairman, Board of Assessors of Keene.

Date: April 14, 2000

Lynn M. Wheeler, Clerk

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