

Ralph K. Selder

v.

City of Nashua

Docket No.: 18209-99PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1999 assessment of \$112,400 (land \$28,900; buildings \$83,500) on a .13-acre lot with single-family home and an outbuilding (the "Property"). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 38 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer requested and was granted leave, under board rule TAX 202.06 (d), to not attend the hearing. In accordance with board rule TAX 202.06 (e) the board decided the case based on the information before it, including the testimony of the City's chief assessor at the

hearing held on July 12, 2001.

The Taxpayer's only submissions were the appeal form and two assessment-record cards. On section F of the appeal form, the Taxpayer stated ". . . any tax for public education be assessed reasonably and proportionably." This statement presumably implies a belief by the Taxpayer that he is not assessed reasonably or proportionately. Additionally, the Taxpayer stated in section G. "Nashua assessor agreed to \$90,000 at first meeting."

The City argued the assessment was proper because:

- (1) any changes made to the assessment have been as a result of a review of market activity for similar properties in the City;
- (2) assessments should change if market values change; and
- (3) the City has no knowledge of the context or the time frame for the Taxpayer's comment regarding the \$90,000 value.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not carry his burden to show the Property was disproportionately assessed.

First, to prove disproportionality, the Taxpayer must show the market value of the Property, when multiplied by the general level of assessment in the municipality, resulted in an incorrect assessment. In this case, the Taxpayer provided no evidence of the Property's market value nor did he provide any evidence that the 1999 general level of assessment, as determined by the department of revenue administration for the City, was incorrect. Assessments must be based on market value. See RSA 75:1. Due to market fluctuations, assessments may not always be at market value. (A property's assessment, therefore, is not unfair simply because it exceeds

the property's market value.) The assessment on a specific property, however, must be proportional to the general level of assessment in the municipality. In this municipality, the 1999 level of assessment was 85% as determined by the revenue department's equalization ratio. This means assessments generally were lower than market value. The Property's equalized assessment was approximately \$132,235 (\$112,400 assessment divided by the .85 equalization ratio). This equalized assessment should provide an approximation of market value. To prove overassessment, the Taxpayer would have to show the Property was worth less than the \$132,235 equalized value. The Taxpayer made no such showing. The Taxpayer submitted two assessment-record cards of other ostensibly similar properties in the City. Without further information regarding how these properties compare to the Property, the board is unable to deduce the Taxpayer's reason for submitting them.

Second, the Taxpayer argued the assessment was increased for no apparent reason as there had been no changes to the Property between 1992 (the date of the last full revaluation) and 1999 (the date of the assessment under appeal). However, the City testified that between 1992 and 1999 it performed two valuation updates and the Property was treated in a consistent manner with all other properties. RSA 75:8 requires the City to annually review its assessments and adjust those that have declined or increased in value. The City's representative, its Chief Assessor, Mr. Angelo Marino, testified that between 1992 and 1999 the City adjusted assessments to reflect changes in market activity and because the market value changed for some properties, their assessments also changed.

The Taxpayer also alleged that at some point in time "the Nashua assessor agreed to

\$90,000.” Mr. Marino testified he had no knowledge of such a conversation and could find no documentation in the City’s records to confirm this conversation. Indeed, he testified the City wrote the Taxpayer requesting a meeting and additional information relative to the basis for the Taxpayer’s appeal but received no response from the Taxpayer. The board finds the Taxpayer’s allegations to be unsubstantiated and the City’s testimony to be credible. In addition, these actions by the City reflect an appropriate amount of diligence in trying to resolve this appeal.

For the reasons stated above, the board finds the Taxpayer has not carried his burden to prove the Property was disproportionately assessed and denies the appeal.

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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Ralph K. Selder, Taxpayer; and Chairman, Board of Assessors, City of Nashua.

Date: July 20, 2001

Lisa M. Moquin, Clerk