Country Gourmet, Inc.

v.

Town of Merrimack

Docket Nos.: 7791-89, 8374-90 and 12062-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989, 1990 and 1991 assessments of $559,300 (land, $177,100; buildings, $382,200) on Map 5D-4, Lot 008, Country Gourmet Restaurant, with a .809-acre lot (the Property). For the reasons stated below, the appeals for abatement are denied.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to carry this burden.

The Taxpayer argued the assessments were excessive because:

(1) the Town's capitalization rate was too low;

(2) the Property's actual income supported a much lower potential, lease value;

(3) the Town's income value was inappropriate;

(4) two-thirds of the area classified as office is used for storage; and

(5) commercial values have fallen faster than other values in the Town.

The Town argued the assessments were proper because:

(1) the Taxpayer's ratio studies were statistically flawed, the bank sales do not represent market value and to use a different ratio would be inequitable;

(2) the Taxpayer's income approach was flawed;

(3) the studies were based on income/costs models derived from market data collected during the revaluation;

(4) the land value was derived from sales collected and analyzed during the revaluation; and

(5) 1,762 s.f. of space was not included in the income analysis because it was considered support space necessary for the restaurant use.

Board's Rulings

We find the Taxpayer failed to prove the Property's assessments were disproportional.

The board questions the Town's methodology, especially its use of $14/s.f. rent. This figure was used on the Property and the Robertson restaurant, and some adjustments certainly should have been made and shown at the hearing. Additionally, the board has stated its disappointment with the Town's failure to introduce any evidence of comparables sales. The Taxpayer also failed to introduce any sales information. This has left the board with no benchmarks upon which to review assessments. Nonetheless, the Taxpayer has the burden of proof, which was not met. The Taxpayer raised several apparently legitimate issues but failed to show how those possible calculation errors resulted in erroneous assessments. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899). Finally, based on the board's

experience, the board does not find the assessments to be out of line. (The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. RSA 541-A:18, V(b).)

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Northeast Property Tax Consultants, Representative for the Taxpayer; Office of the Assessor of Merrimack; and Jay L. Hodes, Esq., Representative for the Town.

Dated: January 22, 1993

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Valerie B. Lanigan, Clerk

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Country Gourmet, Inc.

v.

Town of Merrimack

Docket Nos. 7791-89, 8374-90 and 12062-91PT

ORDER

This order responds to the "Taxpayer's" rehearing motion, which is denied. The Taxpayer's motion failed to present any good cause to show that the board erred as a matter of fact or law. See RSA 541:3, 4. The main thrust of the board's decision was the lack of any market-value benchmarks from which the board could determine whether the property's assessment was incorrect. Assessments must be related to market value. See RSA 75:1; Bemis Bro. Bag Co. v. Claremont, 98 N.H. 446, 450 (1954). The cases cited in the decision state that taxpayers must not only show errors in the assessment, they must also show how these errors have resulted in overassessment, i.e., how the assessment exceeded the property's relative market value. Without the market-value benchmarks, the board was unable to determine whether the Taxpayer's property was overassessed. The remainder of the decision speaks for itself and addressed the other issues raised by the Taxpayer.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Northeast Property Tax Consultants, representative for Country Gourmet, Inc., taxpayer; and the Office of the Assessor of Merrimack.

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Valerie B. Lanigan, Clerk

Date: March 16, 1993

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