J. Russell Scheider

v.

Town of Merrimack

Docket No.: 7830-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of $238,800 (land, $153,600; buildings, $85,200) on a .229-acre lot with a ranch-style, office building (the Property). For the reasons stated below, the appeal for abatement is granted. The Taxpayer also owns another abutting property that was not appealed.

The Taxpayer has the burden of showing the assessment was 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 carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) it reflected more than a 10% per year increase from the Taxpayer's 1981 purchase;

(2) the Property is subject to onerous variance restrictions;

(3) the land assessment on a per-acre basis was excessive;

(4) an adjoining same-sized lot sold for $25,000 in 1987;

(5) a 1992 value opinion estimated a value of $125,000; and

(6) the Property was worth $125,000 on April 1, 1989.

The Town argued the assessment was proper because:

(1) the Property has a prime office location;

(2) it was arrived at by using both the cost and income approaches, based on models developed from market data in the Town;

(3) an adjustment of -25% to the land assessment for economic factors due to the variance restrictions might be warranted; and

(4) the Taxpayer's "appraisal" was for 1992 and the market changed greatly from 1989 to 1992.

The Town also argued the Taxpayer's appeal should be dismissed because the Taxpayer did not prove overassessment of his entire taxable estate, having failed to show his nonappealed property was correctly assessed.

Board's Rulings

Based on the evidence, we find the correct assessment should be $200,400 (land $115,200 and building $85,200). This assessment is ordered because an adjustment should have been made for the restriction. The board, therefore, used a -25% adjustment on the land assessment.

The Taxpayer's argument concerning per-acre assessment fails. Differing per-acre assessment values are not necessarily probative evidence of inequitable or disproportionate assessment. The market generally indicates higher per-square-foot prices for smaller lots than for larger lots, and since the yardstick for determining equitable taxation is market value (see RSA 75:1), it is

necessary for assessments on a per-square-foot basis to differ to reflect this market phenomenon.

In determining the proper and proportional tax burden of any taxpayer, the board must "consider" all of the taxpayer's property in the municipality whether each property was appealed or not. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985) Id.; see also Bemis Bro. Bag Co. v. Claremont, 98 N.H. 446, 451 (1954); Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200 (1899). Clearly, the taxpayer has the burden to prove disproportionality of the assessment on the appealed property. Appeal of Town of Sunapee, 126 N.H. at 217. But does the taxpayer also have the burden to prove the taxpayer's other, nonappealed properties, were properly assessed? We think not. It is sufficient for the taxpayer to describe the nonappealed properties, to introduce the property-record cards and to testify that after investigation the assessments on the nonappealed properties are correct. See Appeal of Town of Bow, Newington & Seabrook, 133 N.H. 194, 199 (1990). (Burden carried by showing overassessment within town only, not required to prove other towns were properly assessed.) Here, the Taxpayer described the nonappealed property, we received its property-record card, and we conclude the nonappealed property was not under assessed.

If the taxes have been paid, the amount paid on the value in excess of $200,400 shall be refunded with interest at six percent per annum from date

paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____

George Twigg, III, Chairman

_____

Ignatius MacLellan, Esq., Member

CERTIFICATION

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

Dated:February 1, 1993

_____

0008

Valerie B. Lanigan, Clerk

J. Russell Scheider

v.

Town of Merrimack

Docket No.: 7830-89

ORDER

On February 19, 1993 the Board of Tax and Land Appeals received a motion for reconsideration from the Taxpayer in the above captioned matter.

The Taxpayer provided no information or arguments to support his appeal. The date on the Board's decision was February 1, 1993. Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

Appeals to the Supreme Court must be made within 30 days of any action taken by the board on a motion for rehearing.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
George Twigg, III, Chairman

_____
Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to J. Russell Scheider, Taxpayer; Office of the Assessor of Merrimack; and Jay L. Hodes, Esq., Representative for the Town.

Dated: _____
0008 Valerie B. Lanigan, Clerk