Jensen's Inc.

v.

Town of Tilton

Docket No.: 10623-90 and 11657-91 PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of $785,800 (land $230,500; buildings $555,300) and 1991 assessment of $787,800 (land $230,500; buildings $557,300) on a mobile home park with office on 59 acres (the Property). For the reasons stated below, the appeal for abatement is denied.

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 failed to carry this burden. However, we find that the building value for 1991 should be corrected to the 1990 value.

The Taxpayer was represented by R. William Gordon, tax consultant of Equitax (Consultant).

The Consultant argued the assessment was excessive because:

(1) the improvements consist of 43 mobile home pads with approvals for 18 additional pads of which only 3 have been developed with septic systems and, because of ledge, the remainder will not be developed until town sewer is put in;

(2) the Taxpayer did not dispute the values placed on the 18 pads, the office and the excess land, but based on the income approach arrived at a fair market value of $532,000 for the Property;

(3) the Town's comparable (Windy Hill mobile home park) sold for $723,000, not $774,000 as indicated by the Town, and was not a good comparable because it was sold to the park residents as a housing cooperative and not as a mobile home park;

(4) all the other comparable sales used by the Town are located in other towns and sold at or near the peak of the real estate market, some as old as 40 months, without any time adjustments; and

(5) the Town's assessed value should not include the business value related to the marketing and control of placement of units in the park.

The Town argued the assessment was proper because:

(1) of all the mobile home parks in town, Jensen's is the finest;

(2) Jensen's is the only park which markets its own property and the Taxpayer doesn't consider the added value; and

(3) the sale of Windy Hill mobile home park for $723,000 in April, 1990,

supports the assessment.

Board's Rulings

For the following reasons, we find the Taxpayer failed to prove the Property's assessment was disproportional.

Windy Hill Sale

The Town largely derived the base prices for the assessment from the sale of another Tilton mobile home park (E. M. Houck Communities Inc. to Windy Hill Housing Cooperative on April 18, 1990 for $723,000). The Taxpayer argued this sale was not valid as it was sold to a housing cooperative and not as an operating mobile home park and that one of the parties of the sale, the tenants, were under some duress to purchase the property as a cooperative.

The board finds that the Consultant did not submit any evidence relative to his claim that the sale was not comparable to the subject property because the change of the legal form of ownership (corporation to cooperative) affects value in a similar fashion as a change of title from individual ownership to condominium ownership does. Further, the Consultant did not know of or submit evidence of whether the Cooperative had access to any below market interest that could have affected the consideration.

While it is possible that the tenants may have been under some duress to purchase the mobile home park, the Consultant did not submit any evidence on that issue, only speculation. On the contrary, the Town stated that there was another bona fide purchaser that spurred the tenants to eventually purchase

the park. RSA 205-A:21 (1992 supp) provides for the notification of the tenants by the park owner and an opportunity for the tenants to obtain financing if the park owner reaches an agreement to sell the park. While this statute does not totally negate the possibility of the tenants being under duress, it does lessen the potential for duress by laying out the rights and time frame of the tenants in meeting a bona fide offer and in obtaining financing for the purchase.

Business Value

The board finds that any rights the Taxpayer may properly have under RSA 205-A:2 (1992 supp) relative to approving or regulating the sale or placement of units in the park is a right that is related to the real estate, would be transferred with the Property and thus is taxable. This right is distinguished from the business name or goodwill that is related to the business and could be transferred separately form the Property.

While the Town did not separately value this right, it is a valid factor to consider in valuing the Property. See Paras v. City of Portsmouth , 115 N.H. 663, 67-68 (1975).

Consultant's Income Approach

The income approach submitted by the Consultant focused only on the rental sites, only one component of the assessed value, and adopted the Town's value as correct for the other components. This approach may show one

component may be high, but it does not fulfill the Taxpayer's burden of proving its entire taxable estate was overassessed. Appeal of Town of Sunapee 126 N.H. 214, (1985) (taxpayer is not entitled to an abatement where the aggregate value is not shown to be disproportional); Amoskeag Mfg. Co. v.

Manchester, 70 N.H. 200, 205 (1899) (an abatement is not warranted where the overassessment of one portion of a taxpayer's estate is offset by the underassessment of another portion of the estate).

Further, the income approach, as presented by the Consultant, did not capture all the rights of the Property as discussed in the previous section.

Conclusion

Therefore, the Taxpayer did not meet its burden of proving the assessment was disproportional. However, the 1991 assessed value should be abated to the 1990 amount to correct the Town's improper listing and calculation for heat in 1991.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Jensen's Inc., Taxpayer; and Chairman, Town of Tilton.

Dated: July 16, 1993

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Valerie B. Lanigan, Clerk