

Clingan Baird Realty Trust, Elizabeth C. Baird, Trustee

v.

Town of Tilton

Docket No.: 10682-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the following 1990 assessments: "Lot 68"-adjusted to \$137,400 (land, \$31,500; buildings, \$105,900) on .385-acres with building and "Lot 70" \$159,700 (land, \$22,000; buildings, \$137,700) on .200-acres with building (the Property). The Taxpayer also owns, but did not appeal, another property, Map 6, Lot 6, that was assessed at \$337,400. The Taxpayer and the "Town" waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is denied on Lot 68 and granted on Lot 70.

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).

Clingan Baird realty Trust, Elizabeth C. Baird, Trustee

v.

Town of Tilton

Docket No.: 10682-90

Page 2

The Taxpayer argued the assessments were excessive because:

Lot 68

- (1) as of May 1, 1990, the second floor had only a 2-bedroom apartment and a 1-bedroom apartment;
- (2) the storage area in back has a leaky roof and is not useable;
- (3) the driveway is dirt; and
- (4) the depreciation quality adjustment should be A0 or B1.

Lot 70

- (1) the assessment-record card has errors, i.e., no open or enclosed finished porches;
- (2) the garage is not useable, first floor needs to be rebuilt, second floor needs repairs, and sills need replacing;
- (3) the driveway is dirt;
- (4) one apartment needs a new kitchen sink and cabinets; and
- (5) the depreciation quality adjustment should be B1 or B2.

The Taxpayer further argued the assessments were excessive because:

- (1) the average per unit sale in 1990 was \$30,225 for a 4-unit building in Tilton;
- (2) the average per unit at the end of 1990 was \$33,500 for a 2-unit building in Franklin;
- (3) larger properties have almost the same value as smaller properties; and

Clingan Baird realty Trust, Elizabeth C. Baird, Trustee

v.

Town of Tilton

Docket No.: 10682-90

Page 3

(4) the Town used sales of duplexes, which are owner occupied, and are normally higher per unit.

Clingan Baird realty Trust, Elizabeth C. Baird, Trustee

v.

Town of Tilton

Docket No.: 10682-90

Page 4

The Town argued the assessments were proper because:

Lot 68

- (1) concerns relative to the number of bedrooms, leaky roof, dirt access and quality grading will be adjusted for April 1, 1992;
- (2) the storage area roof was noted during the 1990 inspection and was given a 2% temporary depreciation;
- (3) the Town records regarding the driveway access showed an abatement of \$1,600 was granted on May 1, 1991 resulting in a \$31,500 land assessment;
- (4) comparing the Taxpayer's lot to sale records indicates it is comparable in quality grade;
- (5) the major difference is between the sales and the subject is in the land value; when adjusting for the undersized lots, the property is well within the established values;
- (6) the Taxpayer's comparables are not valid as all but 2 are located in different towns; the remaining 2 comparables have substantially smaller lots than the subject, therefore a lower value exists; and
- (7) the assessment on Lot 68 is fair and no further adjustments are warranted.

Lot 70

- (1) a review of the property does show open and enclosed porches exist;
- (2) a review of the 19 X 8 area shows the porch area is completely weather

Clingan Baird realty Trust, Elizabeth C. Baird, Trustee

v.

Town of Tilton

Docket No.: 10682-90

Page 5

tight;

Clingan Baird realty Trust, Elizabeth C. Baird, Trustee

v.

Town of Tilton

Docket No.: 10682-90

Page 6

(3) the assessment-record card notes the garage is in need of sill repairs, as well as the sill problem for the 19 x 8 area, for which an 8% functional depreciation was given, amounting to a \$19,300 +\ - reduction;

(4) the wooden wall was not considered as it was installed after the time of inspection and after the date of the revaluation;

(5) the driveway was not assessed as pavement did not exist;

(6) the argument that one apartment needs a new kitchen and cabinets has been accounted for by giving a temporary depreciation of 5% or \$12,000 +\ -;

(7) when comparing the quality grade to other similar homes within the Town, it shows the property to be of average quality construction (A0);

additionally, a 30% depreciation (\$72,400 +\ -) was given for normal wear and maintenance;

(8) the property is assessed well within established parameters as determined by sales; and

(9) the methodology used was fair and equitably applied throughout the Town.

The board's inspector reviewed the assessment-record card, reviewed the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the following: Lot 68 - due to the age of the building an adjustment for physical depreciation is warranted; and Lot 70 - a 5% right-of-way adjustment and a 5% physical depreciation is warranted.

Clingan Baird realty Trust, Elizabeth C. Baird, Trustee

v.

Town of Tilton

Docket No.: 10682-90

Page 7

Note: The inspector's report is not an appraisal. The board giving it the weight it deserves. Thus, the board may accept or reject the inspector's

recommendation. In this case, the board has placed no weight on the inspector's report.

Board's Rulings

Based on the evidence, we find the Taxpayer failed to carry its burden concerning the assessment on Lot 68, but we find an adjustment for Lot 70 is proper to reflect the poor condition of the garage.

While the Taxpayer presented numerous complaints about the assessments, the Taxpayer did not provide the board with any market data from which the board could determine whether the properties were overassessed. Since these are multi-unit properties, the Taxpayer should have provided the board with an income and expense statement. Even the Taxpayer in its August 26, 1992 letter acknowledged that the proper way to evaluate these properties would be by reviewing the cash flow. However, the Taxpayer did not supply us with that information.

To the extent the Taxpayer submitted sales, we were unable to rely upon them. The board did not rely upon the sales because there was insufficient data from which the board could determine whether the properties were overassessed. Additionally, the Taxpayer did not present the comparables in a

Clingan Baird realty Trust, Elizabeth C. Baird, Trustee

v.

Town of Tilton

Docket No.: 10682-90

Page 8

way that would allow the board to review the data had it been presented.

The board, however, concluded the garage and floor above the garage on Lot 70 should have been given additional depreciation because of its significant physical problems. The board determined that the garage was assessed before depreciation at \$36,050. Even if we accepted the Town's position that 5% functional depreciation was given to all of the buildings, the garage value would still be \$16,750. The board concluded this was an excessive value given the garage's condition, and thus, we depreciated all of the buildings by an additional 5%, which brings the garage value down to a more reasonable value.

If the taxes on Lot 70 have been paid, the amount paid on the value in excess of \$147,580 (land, \$22,000; building, \$125,580) shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Clingan Baird realty Trust, Elizabeth C. Baird, Trustee

v.

Town of Tilton

Docket No.: 10682-90

Page 9

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Elizabeth C. Baird, Trustee for Taxpayer; and Chairman, Selectmen of Tilton.

Dated: July 27, 1993

Melanie J. Ekstrom, Deputy Clerk

0008/0004