

Rudy Grzanna

v.

City of Claremont

Docket No.: 8638-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1990 assessment of \$131,000 (land \$21,300; buildings \$109,700) on a 12.5-acre lot with a 1-acre house lot and 11.5 acres in current use (the Property). For the reasons stated below, the appeal for abatement is granted.

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 203.09(a); 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) the house was still under construction in 1990 as described in a letter to the board dated July 4, 1991; the house is estimated to have been approximately 60 to 65 percent complete;
- (2) the Property is assessed excessively compared to the neighboring properties;

and

(3) an appraisal as of June 1993 estimated the market value at \$115,000.

The City recommended the assessment be adjusted to \$122,900 to correct for an incorrect basement calculation and several incorrect listings and argued the revised assessment was proper because:

(1) the dwelling is more than 60% to 65% complete;

(2) the dwelling was viewed twice by the City and the unfinished items were noted;

(3) the Taxpayer's 1993 appraisal, if trended by the City's 1992 equalization rate, supports the revised assessment ($\$115,000 \times 1.14 = \$131,000$); and

(4) the site, while accessed by a long drive, does have a seasonal view that compensates for the access.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$117,500 (land \$21,300; building \$96,200). This assessment is ordered because:

(1) the board finds based on the photographic evidence and testimony of both parties, the unfinished depreciation should be increased by 5% as of April 1, 1990;

(2) the City's recommended corrections are reasonable and are incorporated in this decision; and

(3) this revised assessment is generally supported by a trending of the Taxpayer's 1993 appraisal and adjusting for the granting of current use.

The board in arriving at this assessment did so without the benefit of the City's corrected assessment-record card. However, the board attempted to calculate what the replacement cost of the dwelling was as recommended by the City by subtracting the land value and the extra features value and factoring in the 10% depreciation that was testified as having been applied to the replacement cost of the house. If the City finds that the board's mathematical calculations are incorrect, the City should file a motion for clarification within 20 days of the clerk's

date laying out what the proper calculation would be including the board's finding of an additional 5% depreciation for unfinished items.

If the taxes have been paid, the amount paid on the value in excess of \$117,500 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the City shall also refund any overpayment for 1991, 1992 and 1993. Until the City undergoes a general reassessment, the City shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Rudy Grzanna, Taxpayer; and Office of the Assessor, City of Claremont.

Dated: December 1, 1993

0008

Valerie B. Lanigan, Clerk

Rudy Grzanna

v.

Town of Claremont

Docket No.: 8638-90PT

ORDER

This order responds to the "Taxpayer's" January 29, 1994 letter (copy attached), requesting an explanation of the "City's" compliance with the board's December 1, 1993 decision. The City has not filed any response to the Taxpayer's letter.

The City shall, within 10 days of the clerk's date below, file with the board, copying the Taxpayer, a letter addressing the Taxpayer's questions. Upon receipt of the City's explanation, the Taxpayer shall, within 10 days of the City's letter, inform the board as to whether additional board involvement is required. If the City fails to timely and fully respond, the board shall take appropriate steps to obtain the City's compliance.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS.

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Rudy Grzanna, Taxpayer; and Office of the Assessor, City of Claremont.

Dated: March 14, 1994

0008

Valerie B. Lanigan, Clerk

Rudy Grzanna

v.

City of Claremont

Docket No.: 8638-90

ORDER

This order responds to the "Taxpayer's" January 29, 1994 letter requesting an explanation of the City's compliance with the board's December 1, 1993 (Decision) and the City's response contained in their letter of March 22, 1994.

Based on the review of the City's response and the tax abatement calculations attached to the Taxpayer's letter, the board finds that the abatements for the 1990 and 1991 tax years were properly calculated and refunded. Further, it appears that the City increased the assessment for the 1992 and 1993 tax years to reflect further completion of the house by the Taxpayer. Based on the new assessment for 1992 and 1993 of \$122,907, the abatement calculations and interest appear to be correct.

While the adjustments made by the City for the 1992 and 1993 tax years appear to have been made in good faith, (further completion of the house), the Taxpayer still may, if he wishes, file a motion for enforcement as detailed in TAX 203.05 (j) (copy attached).

The balance of the Taxpayer's January 29, 1994, letter appears to be a reiteration of the points raised at the hearing and addressed in the board's decision. Therefore, no further action is necessary.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing Order has been mailed this date, postage prepaid, to Rudy Grzanna, Taxpayer; and the Office of the Assessor, City of Claremont.

Date: April 5, 1994

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Valerie B. Lanigan, Clerk

Rudy Grzanna

v.

City of Claremont

Docket No. 8638-90-PT

ORDER

This order relates to the "Taxpayer's" TAX 203.05(j) motion, asserting the "City" has not complied with the board's order concerning abatements for subsequent years. See RSA 76:17-c; TAX 203.05. Specifically, the Taxpayer asserted the City has not made abatements for tax years 1991, 1992 or 1993.

The City shall, within 10 days, either:

- 1) comply with the board's order, filing documentation of compliance with the board; or
- 2) inform the board in writing about the reasons for noncompliance. If the City claims it used, in subsequent years, the board's ordered assessment with good faith adjustments, the City shall provide a statement of the good faith reasons.

The Taxpayer's attorney argued the City was not permitted to make adjustment to the ordered assessment. The board disagrees. The board reads RSA 76:17-c to function as follows:

- 1) the board orders an abatement based on an ordered assessment for the appealed year(s) only;

2) the municipality then "takes" the ordered assessment and reviews it for subsequent years (after tax year(s) appealed) and, if appropriate, adjusts the ordered assessment for subsequent years;

3) the municipality then abates taxes for subsequent years based on the ordered assessment or the ordered assessment as adjusted; and

4) if the Taxpayer disagrees with the municipality's revisions, the Taxpayer may file a motion with the board to review the municipality's actions.

This approach is detailed in TAX 203.05 (copy attached). TAX 203.05(g) specifically authorizes such adjustments. See also TAX 203.05(c)(7) (definition of "subsequent tax years"); RSA 541-A:12 II (rules have effect of law and are prima facie evidence of the proper interpretation of the matter referred to). TAX 203.05(g) allows later adjustment, i.e., after the April 1 assessment date for subsequent years, because a granted abatement means the board disagreed with some part of the municipality's analysis and the resulting assessment. Thus, TAX 203.05(g) allows the municipality to review the subsequent assessments in light of the board's decision and information that would justify an RSA 75:8 type of adjustment. For example, in this case, the Taxpayer's property was not fully complete, as of April 1, 1990. If additional work was done after April 1, 1990, it would be an error for the City not to adjust the board's ordered 1990 assessment for new work done and assessable in subsequent years.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Grzanna v. City of Claremont
Docket No. 8638-90-PT

CERTIFICATION

I hereby certify that copies of the enclosed Order have been mailed this day, postage paid, to Michael C. Shklar, counsel for Rudy Grzanna, Taxpayer; and the Chairman, Board of Assessors of Claremont.

Date: September 23, 1994

Valerie B. Lanigan, Clerk

0009

Rudy Grzanna

v.

City of Claremont

Docket No. 8638-90PT

ORDER

This order relates to the board's September 23, 1994 order, which required the "City" to submit evidence of compliance with the abatement ordered by the board in its December 1, 1993 decision. The City filed a letter on September 30, 1994, stating the 1990 and 1991 assessments have been abated to the board's ordered assessment, but further, that the 1992 and 1993 assessments were increased 5% from the ordered assessment to reflect the further completion of the house as testified to during the hearing before the board.

The board has reviewed the record of the October 28, 1993 hearing and finds the Taxpayer testified that subsequent to 1990 nearly \$4,000 in materials, excluding labor, had been added to the house. Based on the City's letter and the board's review of the record, the board finds the City has complied with the board's decision and has provided a good faith basis for the 1992 and 1993 adjustments.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that copies of the foregoing order have been mailed, postage prepaid, to Michael C. Shklar, counsel for the Taxpayer; and, Chairman, Board of Assessors of Claremont.

Date: November 17, 1994

Valerie B. Lanigan, Clerk

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