Ryder, Zimmerman & Ryder

v.

Town of Troy

Docket Nos.: 9324-90 and 11704-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessments of:

$95,150 (land $29,100; buildings $66,050) on Lot 252, a .38-acre lot with a two-family home;

$92,300 (land $24,000; building $68,300) on Lot 10, a .20-acre lot with a two-family home;

$94,200 (land $32,300; building $61,900) on Lot 2, a .68-acre lot with a single-family home;

$162,700 (land $61,200; building $101,500) on lot 197, a 1.10-acre lot with five apartments on two sites; and

$184,350 (land $46,700; building $137,650) on Lot 250, a .96-acre lot with a five-unit apartment building (the Properties).

The Taxpayers 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 appeals for abatement are granted.

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers 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).

The Taxpayers submitted a package to support their position and made the following general arguments:

(1) the assessments were excessive when compared to the Properties' purchase prices plus improvement costs;

(2) the assessments were excessive when compared to the capitalization rate approach to value, excluding the vacancy rates;

(3) some of the Properties were rented as Section 8 housing, which required extensive renovations;

(4) values have decreased rapidly while taxes have increased, and there is no market for multi-family homes and apartment properties; and

(5) Lot 250 was listed for sale and in 1991, only a $90,000 offer was received.

The Town argued the assessments were proper because:

(1) the same methodology was used throughout the Town in assessing land and building values (considering square footage, grade, age and condition) and the Properties' assessments were within the range of comparable properties;

(3) the Taxpayers' comparables were not comparable because they were located in other towns and states;

(4) comparable, two-unit homes were assessed in the $75,300 - $139,850 range;

and

(5) the Town already reduced the Properties' assessments substantially to address the Taxpayers' concerns.

The board's inspector reviewed the assessment-record cards, the parties' briefs, and filed reports with the board (copies enclosed). In this case, the inspector only reviewed the files; he did not perform an on-site inspections. These reports concluded the proper assessments should be:

(1) $86,600 for Lot 252;

(2) $79,250 for Lot 10;

(3) $79,650 for Lot 2;

(4) $154,200 for Lot 197; and

(5) $165,700 for Lot 250.

The inspector adjusted the physical depreciation of each building to address its age and condition. Note: The inspector's reports are not appraisals. The board reviews the reports and treats the reports as it would other evidence, giving them the weight they deserve. Thus, the board may accept or reject the inspector's recommendations.

Board's Rulings

Based on the evidence, the board adopts the inspector's recommendations as stated above. The board concludes the inspector's reports were the best evidence available upon which a credible decision could be made.

The board does not accept the Taxpayers' requested assessments because: (1) the Taxpayers did not supply any sales data (see below);

(2) the Taxpayers did not provide any information concerning market rent or

expenses, which is required for the income approach to be used; and (3) the Taxpayers did not explain what effect, if any, the Section 8 and HUD subsidies had on the Properties' values.

The Taxpayers did not present any credible evidence of the Properties' fair market values. To carry this burden, the Taxpayers should have made a showing of the Properties' fair market values. These values would then have been compared to the Properties' assessments and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

Furthermore, the Taxpayers arguments concerning (1) the assessments increases (see below), (2) the original purchase prices plus improvements, (3) the purchase prices of properties in other states and municipalities, and (4) the result of any assessment appeals on properties in other jurisdictions were all irrelevant. The board's focus is on the 1990 and 1991 market value, see RSA 75:1, and how the assessments compare to other assessments in the municipality.

Increases from past assessments are not evidence that a taxpayer's property is disproportionally assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985).

While the Town's evidence was also lacking, the evidence indicated that other properties were assessed using the same methodology. The Town testified the Properties' assessments were arrived at using the same methodology used in

assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

Unfortunately, the Town failed to submit any sales to support the assessments. Since the Town was recently revalued, the Town should have submitted sales for the board's consideration. RSA 75:1 requires that assessments be in line with market value. Therefore, providing sales is essential for the board to compare the Properties' assessments with fair market value and the general level of assessment in the municipality. See Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986).

Given the deficiencies in both parties' evidence and given the board's review of the assessments and the photographs, the board adopts the inspector's report as the best evidence.

If the taxes have been paid, the amount paid on the combined value in excess of $565,400 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c and board rule Tax 203.05, the Town shall also refund any overpayment for 1992, and until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8.

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

_____
Paul B. Franklin, Member

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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 Ryder, Zimmerman & Ryder, Taxpayers; and Chairman, Selectmen of Troy.

Dated: October 18, 1993

_____
Lynn M. Wheeler, Deputy Clerk

Ryder, Zimmerman & Ryder

v.

Town of Troy

Docket Nos.: 9324-90 and 11074-91PT

ORDER

This order responds to the "Town's" October 19, 1993 rehearing motion, which is granted.

Due to typographical errors, the board's October 18, 1993 decision is amended to read as follows (revisions underlined):

Page 3, paragraph (4): "$15<u>2</u>,200 for Lot 197."

Page 5, third paragraph: "If the taxes have been paid, the amount paid on the value in excess of $<u>563,400</u> 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 Town shall also refund any overpayment for 1991, 1992 and 1993.

Until the Town undergoes a general reassessment, the Town 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

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Ryder, Zimmerman & Ryder, Taxpayers; and Chairman, Selectmen of Troy.

Dated:

Valerie B. Lanigan Clerk

Ryder, Zimmerman & Ryder

v.

Town of Troy

Docket Nos.: 9324-90 and 11074-91PT

ORDER RE: ENFORCEMENT OF ABATEMENT AND INTEREST

On February 22, 1994, the board received a request for enforcement from the Taxpayer of the board's decision of October 18, 1993 and as amended by the board's order of November 24, 1993. The Taxpayers' concern relates to the methodology and the amount of interest calculated by the Town on the board's ordered abatement for the several Properties in question.

The board finds as follows.

Based on the documents submitted by the Taxpayers with their request for enforcement, it appears that neither the Town nor the Taxpayers have calculated the interest on the ordered abatement correctly and in accordance with the law.

The board rules in keeping with TAX 202.07 (copy attached) that any RSA 76:17-a interest (6% interest on ordered abatement) should be calculated for each Property for each year from the date the Taxpayers paid the taxes to the date the Town refunded the taxes. Further, if the Taxpayers have not paid their taxes when due and interest pursuant to RSA 76:13 (12% for late payment) and either RSA 80:32 or RSA 80:69 (18% redemption interest) has accrued, that

interest related to the assessments found by the board to be excessive should also be abated (See Tax 202.08, copy attached). The RSA 76:13 and either RSA 80:32 or RSA 80:69 interest on the amount found to be proper by the board are still due and payable by the Taxpayers.

Based on the above findings, the board orders the Town, within 20 days of the Clerk's date on this order, to respond in writing showing: 1) the principle abatements due for each property for each year, 2) the calculations of the RSA 76:17-a interest, and 3) the calculations for any interest still due under RSA 76:13 and RSA 80:32 or RSA 80:69. The Town shall copy its response to the Taxpayers.

In closing, the board does not desire to micromanage municipal administrative duties; however, the board must enforce its decisions and any interest applicable to the ordered abatements.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Ryder, Zimmerman & Ryder, Taxpayers; and Chairman, Selectmen of Troy.

Dated: March 22, 1994

0008

Valerie B. Lanigan Clerk

Ryder, Zimmerman & Ryder

v.

Town of Troy

Docket Nos.: 9324-90 and 11074-91PT

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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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 Ryder, Zimmerman & Ryder, Taxpayers; and Chairman, Selectmen of Troy.

Dated: March 25, 1994

0008

Valerie B. Lanigan Clerk