George W. Carr

v.

Town of Northwood

Docket No.: 9588-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of $182,600 (land $78,800; buildings $103,800) on a 6.4-acre lot with a single-family house and various sheds (the Property). For the reasons stated below, the appeal for abatement is granted to the Town's recommended adjusted assessment.

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).

The Taxpayer argued the assessment was excessive because:

(1) contamination from a nearby gas station affected value and the value of the frontage was definitely influenced by the abutting property;

(2) the house is a reproduction colonial, not antique, and was not built to antique colonial's standards;

(3) property values were declining in 1990;

(4) three brokers estimated the value between $125,000 and $150,000 and an appraiser testified his estimate of value in 1990 was $150,000; and

(5) the fair market value as of April 1, 1990 was $150,000.

The Town inspected the Property and agreed that some of the buildings were overassessed, .32 acres should be removed from the fair category and a .50 adjustment for residential use should be applied to the frontage instead of .65, reducing the assessment to $160,800. The Town argued the revised assessment was proper. Further, the Town stated the Taxpayer's "Little" sale was a family transaction and was in current use.

Board's Rulings

The parties agreed that the Town's revised assessment was proper for 1990. This revised assessment was consistent with the board's review of the Taxpayer's evidence and the Town's evidence.

If the taxes have been paid, the amount paid on the value in excess of $160,800 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.

During the hearing, the board discussed the affect the revised assessment would have on subsequent years. Specifically, the Town used a different assessment for subsequent years because progress had been made in

addressing the contamination issue. The board explained to the parties the effect of RSA 76:17-c, and the board indicated that based on the evidence, the Town would appear to have a good faith reason to adjust the 1991, 1992 and 1993 assessments based on the remediation of the contamination situation. The board explained this to the Taxpayer, but the Taxpayer stated he did not think the Town was justified in reducing the contamination adjustment. He indicated he intended to file a motion under TAX 203.05(j). The board warned the Taxpayer at the hearing and again warns the Taxpayer, that a frivolously filed motion to enforce could result in the board ordering the Taxpayer to pay the Town's costs incurred in defending such motion. We specifically note that even the Taxpayer's appraiser agreed with the Town's decrease in the contamination adjustment, and that appraiser's value opinion for the subsequent years was consistent with the Town's assessments in those years. Therefore, while the Taxpayer may file a motion to address the subsequent years, the board again reminds the Taxpayer that the board could find, based on the evidence submitted at the original hearing, that the motion was frivolous, resulting in an order of costs against the Taxpayer.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, <u>not the date this decision is received</u>. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs

clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____

Ignatius MacLellan, Esq., Member

_____

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to George W. Carr, Taxpayer; and Mary E. Pinkham-Langer, Agent for the Town of Northwood.

Dated: March 1,1994

_____

Valerie B. Lanigan, Clerk