John R. Bradshaw

v.

Town of Marlborough

Docket No.: 9866-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of $281,300 (land $22,800; buildings $258,500) on a .83-acre lot with an industrial building and two warehouses (the Property). The Taxpayer also owns, but did not appeal, a .14-acre lot used as a parking lot and assessed at $13,300. For the reasons stated below, the appeal for abatement is denied. The Town's motion for final default is also denied, and this decision will discuss that motion.

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 failed to carry this burden and prove disporportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Property is a converted grist mill;

(2) the Property's actual income and expense figures for 1989 demonstrated a 1990 value $222,000, using a 10% capitalization rate;

(3) the Property is unique and market data would not be relevant; and

(4) the Town did not protest the department of revenue's equalization ratio.

The Town argued the assessment was proper because:

(1) the Taxpayer did not submit any market rent information and could not estimate the Property's potential rent because of the lack of market data, which requires denial of the appeal;

(2) a one-year review of the Property's income and expense is not a valid methodology rather a review of the past and future performances should have been reviewed;

(3) the Taxpayer did not show the general level of assessment and the Town did not stipulate to the department of revenue's equalization ratio; and

(4) the Property was assessed consistent with other properties in the Town.

Board's Decision on Town's Motion for Final Default

After reviewing the motion, the party's written responses thereto and the party's arguments at the hearing, the board has somewhat reluctantly decided to deny the Town's motion. As stated at the hearing, the board concludes the Taxpayer did not make a good faith effort to answer the interrogatories and to comply with the board's order on discovery. The board found the Town's position generally persuasive, especially since the Taxpayer failed to answer even the simple question concerning the square footage of the units. Additionally, the board concludes the Taxpayer was not forthcoming with answers, especially in terms of providing either the requested leases or an explanation as to why those leases could not be provided with the

interrogatory responses. However, the board denies the motion because the board concludes the limitation on the Taxpayer's evidence imposed by the board provided a sufficient sanction for the Taxpayer's failure to completely answer the interrogatories. See Kearsage Computer, Inc. v. Acme Staple Co., 116 N.H. 705, 706-08 (1976) (limitation of evidence based on incomplete interrogatory answer was within the court's discretion). At the hearing the board restricted the Taxpayer to information that had been supplied in the interrogatories, which as explained below has resulted in a denial of the appeal because the Taxpayer was unable to meet his burden. Therefore, we do not think the Town has been prejudiced by the board's denial of the motion.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not carry his burden of proof for two general reasons:

(1) the Taxpayer failed to introduce any evidence concerning market rental and vacancy information; and

(2) the Taxpayer's calculation of the 1990 value was not reflective of the Property's status as of April 1, 1990.

Concerning the first issue, the Taxpayer did not demonstrate that this property was so unique that market rent was not relevent. Moreover, the Taxpayer did not establish that the actual rents were consistent with the market rent, and thus the Taxpayer's sole reliance upon the actual rents was insufficient to carry the Taxpayer's burden. See Coliseum Vickerry Realty Co. Trust v. City of Nashua, 126 N.H. 368, 369-70 (1985); Demoulas v. Town of

Salem, 116 N.H. 775, 781-82 (1976).

Concerning the second issue, the board finds the Taxpayer's income approach did not reflect the Property's value as of April 1, 1990. The board must value the Property as of the April 1, 1990 assessment date. See RSA 75:8; RSA 74:1. Based on the information provided, the Property experienced a high vacancy rate in 1989, but in 1990 the vacancy rate went down and the income increased. Thus, as of April 1, 1990, a prospective purchaser would have found that the vacancy problem and the income deficiency that had been evidenced in 1989 was no longer an issue. The Taxpayer's income analysis was based on the 1989 figures, which were no longer reflective of the Property's actual income and expenses.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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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 Marvin F. Poer & Co., Agent for John R. Bradshaw, Taxpayer; and Chairman, Selectmen of Marlborough.

Dated: November 19, 1993

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Valerie B. Lanigan, Clerk