

Treat Properties Realty Trust

v.

City of Laconia

Docket No.: 9952-90PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$175,000 on a vacant, 2.8-acre lot (the Property). For the reasons stated below, the appeal for abatement is denied.

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 its burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the proper assessment was \$10,230;
- (2) the City's comparables were not comparable (The Taxpayer's report addressed this issue.);
- (3) based on the Taxpayer's report the assessment was excessive (The Taxpayer submitted a lengthy report, the contents of which will not be reiterated here. The arguments in the report are incorporated here.); and

(4) the market would not support the development of the Property for sale of units.

The Town argued the assessment was proper because:

(1) the Property in 1990 had approvals for 10 more units (The approvals lapsed in 1991, and the assessment was then reduced to \$105,000.);

(2) the Property included certain rights at South Downs;

(3) the per-unit site values were reduced by 50% for undeveloped factor;

(4) in 1990 developers were still building units on approved sites;

(5) the assessment was supported by the City's comparables (The City used some properties to support the site value for a unit.);

(6) the Taxpayer's report could not be accepted because he was not using an acceptable appraisal method; and

(7) the site value was discounted twice to reflect the Property's status.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionally assessed. Additionally, the City demonstrated that it had made substantial reductions to the assessment to account for the arguments raised by the Taxpayer. The City, moreover, presented its analysis of estimating the site value from sales. The Taxpayer, on the other hand, did not introduce any market evidence for the 1990 year. To carry this burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the City. See, e.g., Appeal of NET Realty

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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.

The market evidence introduced by the Taxpayer was for sales after the 1990 assessment date and included FDIC sales. Because the board's focus must be on April 1, 1990, the board must view the Property as the market would have viewed the Property in April 1990 without the benefit of hindsight. Determining a property's market value can be a very difficult thing to do, especially in a volatile market. Moreover, to properly assess a property, one must determine when the market began its steep decline. There was insufficient evidence to indicate the market had made a steep decline as of April 1, 1990.

In the future, if the Taxpayer intends to appeal its assessment, it should give consideration to hiring a professional appraiser who could provide the Taxpayer with a market analysis. Absent such analysis, the City appears to have assessed the Property in a manner aimed at assessing the Property's market value, giving due consideration to the problems with the Property.

We find the Taxpayer failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

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, not the date this decision is received. 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

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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

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas R. Tusini, Trustee of Treat Properties Realty Trust, Taxpayer; and Chairman, Board of Assessors, City of Laconia.

Dated: May 31, 1994

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Valerie B. Lanigan, Clerk

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ORDER

This order relates to the "Taxpayer's" rehearing motion, which is denied. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3.

The Taxpayer's rehearing motion included some new information. Pursuant to TAX 201.37 (e) (no new information with rehearing motions), the board has not considered that information.

Concerning the Taxpayer's complaint that obtaining a professional appraisal would have been cost prohibitive, the board sympathizes with the Taxpayer's concern, but the board is unable to adjust the legal burden of proof because of cost considerations. The board, however, considered the probative market evidence provided by the parties, and we recognize that both parties attempted to find better market data to present to the board but such data was not available. Thus, as pointed out in the decision, the board had no choice but to review whether the "City's" methodology was fair and appropriate given the dearth of market data.

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Given the fluctuating market at the time of the assessment, we concluded the best available data was presented to us, and we found the City had made adjustments to the assessment based on the existing data.

The board considered sending out its review field inspector, but we declined for two reasons. First, the inspector, Scott Bartlett, was a former MMC employee, who participated in the City's last revaluation by MMC. Secondly, and more importantly, sending the inspector out would not have produced any better market data because both parties demonstrated that good market data was not available.

For the reasons stated above, the rehearing motion is denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that the foregoing order has been mailed this date, postage prepaid, to Thomas R. Tusini, Trustee of Treat Properties Realty Trust, Taxpayer; and Chairman, Board of Assessors, City of Laconia.

Dated: July 18, 1994

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Valerie B. Lanigan, Clerk