Leo R. and Eleanor G. Roy

v.

Town of Middleton

Docket No.: 9961-90PT

DECISION

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

$141,800 (land $73,900; buildings $67,900) on Lot 75; and

$35,100 (land $10,000; buildings $25,100) on Lot 56.

The Taxpayers did not appear but were granted leave consistent with our Rule, TAX 202.06. This decision is based on the evidence presented to the board. For the reasons stated below, the appeal for abatements is granted on Lot 56 but denied on Lot 75.

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 argued the assessments were excessive because:

(1) the taxes are too high; and

(2) the Taxpayers have financial trouble paying the high taxes.

The Taxpayers argued the assessment on Lot 75 was excessive because:

(1) the resulting taxes were too high; and

(2) neighboring properties were assessed less.

The Taxpayers argued the assessment on Lot 56 was excessive because:

(1) the trailer and the garage have numerous physical defects (described in the Taxpayers' letter and shown in photographs); and

(2) there is a swamp in the back.

The Town argued the assessment on Lot 75 was proper because:

(1) the waterfront sales study supported the assessment;

(2) two specific sales supported the assessment; and

(3) it was equitable with other assessments.

The Town noted the trailer on Lot 56 probably warranted further depreciation due to the poor shape of the interior. The Town argued the assessment on Lot 56, with additional depreciation on the trailer was proper because the land assessment was consistent with other assessments.

Board's Rulings

Based on the evidence, we find the Taxpayers failed to prove Lot 75 was over assessed, and we find the correct assessment on Lot 56 should be $22,525 (land $10,000; building $12,525).

The board concludes the trailer on Lot 56 should have received additional depreciation. The photographs show the trailer is a hodgepodge of poor components that are in disrepair. The trailer has little, if any, value in exchange and has only some value in use. We have attributed $10,000 to the trailer and $2,525 to the

carport and site improvements.

Concerning Lot 75, The Taxpayers did not present any credible evidence of the property's fair market value. To carry their burden, the Taxpayers should have made a showing of the property's fair market value. This value would then have been compared to the assessment 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.

The Taxpayers complained about the high amount of taxes they must pay. The amount of property taxes paid by the Taxpayers was determined by two factors: 1) the Property's assessment; and 2) the municipality's budget. See gen., International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor i.e., the board will decide if the Property was overassessed, resulting in the Taxpayers paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. at 217. The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See The Bretton Woods Company v. Carroll, 84 N.H. 428, 430-31 (1930) (abatement may be granted for disproportionality but not for issues relating to town expenditures); see also Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

We do note that there are several statutes that may provide the Taxpayers with some relief in the future, including:

RSA 72:38-a (elderly tax lien);
RSA 72:39,40 (elderly exemption if over 68 years old); and

RSA 72:28 (veterans' exemption).

We have attached a copy of those statutes to this decision. The Taxpayers should contact the Town to determine what relief the Taxpayers might be eligible for.

If the taxes have been paid, the amount paid on the value of Lot 56 in excess of $22,525 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.

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

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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 Leo R. and Eleanor G. Roy, Taxpayers; Mary E. Pinkham-Langer, Agent for the Town of Middleton; and Chairman, Selectmen of Middleton.

Dated: June 3, 1994

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Valerie B. Lanigan, Clerk