Arthur E. Richardson

v.

City of Laconia

Docket No.: 9999-90PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1990 assessment of $99,500 (land $29,600; buildings $69,900) on a 15,762, square-foot lot with a house (the Property). The Taxpayer also owns, but did not appeal, another property in the City assessed at $115,500. For the reasons stated below, the appeal for abatement is granted.

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 proved disproportionality.

The Taxpayer argued the assessment was excessive because:
(1) the Property was purchased in May 1990 for $70,000 after the Property had been on the market for over a year and owner advertised at $75,000; and
(2) this sale was an arms-length transaction without the seller or purchaser being under any undue pressure; this sale is the best evidence of the Property's market value.

The City argued the assessment was proper because:

(1) the City didn't qualify the sale at that time, because the City felt the seller was in financial difficulty at that time; subsequently (1991 and 1992) three other properties owned by the seller were foreclosed upon; and

(2) several sales of other two family dwellings support the assessment and the assertion the Property sold at a reduced price.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $89,550. In making a decision on value, the board looks at the Property's value as a whole i.e., (as land and buildings together) because this is how the market views value. The board has not allocated the value between land and building, and the City shall make this allocation in accordance with its assessing practices.

This assessment is ordered because:

(1) the board gives some weight to the sale of the Property in May of 1990 but does not find it conclusive evidence of market value because the City did submit some evidence that the sale was not totally arms-length;

(2) the City testified that the seller of the Property had four of the six properties that he owned on the market at that time, of which three were subsequently foreclosed on; further a realtor was not involved with the transfer;

(3) the City's comparables mostly occurred in 1989, rather than in 1990, the tax year under appeal;

(4) the board finds that the physical condition of the Property as noted in the Taxpayer's photographs and appeal documents warrant further depreciation; and

(5) based on the above findings, the assessment should be reduced by 10%.

If the taxes have been paid, the amount paid on the value in excess of $89,550 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 City shall also refund any overpayment for 1991, 1992 and 1993. Until the City undergoes a general reassessment, the City 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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Paul B. Franklin, Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Arthur E. Richardson, Taxpayer; and Chairman, Board of Assessors, City of Laconia.

Dated: April 5, 1994

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Valerie B. Lanigan, Clerk