Pasquale and Violet Pagliuca

v.

Town of Barrington

Docket No.: 11078-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessments as follows:

$45,800 (land $6,450; buildings $39,350) on Lot 1730, a .17-acre lot with a house; and

$6,000 on Lot 1733, an abutting vacant lot (the Properties).

The Taxpayers also own another vacant parcel that was not appealed, and the parties agreed there was no argument about that parcel being underassessed. For the reasons stated below, we order the Town to use its recalculated assessment, but we find no further adjustment is warranted.

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). We find the Taxpayers failed to carry this burden, except concerning combining the lots into one lot.

The Taxpayers argued the assessments on the Properties were excessive because:

(1) the building is unique due to the addition that requires walking through a porch to get to the addition and requires walking through a bedroom to get from the addition to the kitchen, resulting in high functional obsolescence;

(2) the lots are actually one lot due to zoning requirements; and

(3) the proper total assessments should have been $39,250, based on 21% functional obsolescence.

The Town recalculated the assessments, treating the lots as one lot, and this figure was $49,750 (land $10,400;building $39,350).

The Town argued the recalculated assessment on the Properties was proper because:

(1) it was consistent with other assessments;

(2) when equalized, it was consistent with the 1992 equalized assessment that was calculated during the 1992 revaluation; and

(3) the Taxpayers' asserted functional problems with the porch could be easily remedied and exists in its present layout with a benefit to the owner.

The Town also argued the Taxpayers did not present any market value information to support a further adjustment for the layout (the Town having already given a 10% functional adjustment), and thus, the appeal should be denied.

Board's Rulings

Based on the evidence, we find the Taxpayers failed to prove the Properties' assessments were disproportional, except for the Town's failure to assess the lots as one lot. We also find the Town supported the Properties' recalculated assessments. Thus, the Town shall reduce the 1992 assessment to $49,750.

The board concludes the overall assessment was not shown to be excessive. The board does not agree with the Taxpayers that the layout warranted an additional adjustment. For all the negatives the Taxpayers expressed, there is a positive factor that they ignored. Namely, the Taxpayers failed to consider that the house has two distinct units--one that can be rented (the original house) and one that can be preserved for the owners' exclusive use (the addition). The perceived detriment of the layout may be overshadowed by the perceived benefit.

Additionally, the Taxpayers did not present any credible evidence of the Properties' fair market value, and they presented no evidence of the market effect of the layout. To carry their burden, the Taxpayers should have made a showing of the Properties' fair market value. This value would then have been compared to the Property's 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.

Finally, and only as confirmatory evidence, the 1991 equalized value ($85,775) was very close to the 1992 equalized value ($85,865), and the 1992 value was based on the 1992 revaluation.

If the taxes have been paid, the amount paid on the value in excess of $49,750 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. This assessment is only applicable to 1991 because the Town was revalued in 1992.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) 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 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 Edmund S. Balboni of the Beal Companies, Agent for Pasquale and Violet Pagliuca, Taxpayers; Mary E. Pinkam-Langer, Agent for the Town of Barrington; and Chairman, Selectmen of Barrington.

Dated: January 25, 1995

_____
Valerie B. Lanigan, Clerk

Pasquale and Violet Pagliuca

v.

Town of Barrington

Docket No.: 11078-91PT

ORDER

This order responds to the "Town's" January 31, 1995 request for clarification, which is granted.

The board amends the last sentence of paragraph 1 on page 3 to read as follows:

"Thus, the Town shall reduce the 1991 assessment to $49,750."

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 order has been mailed this date, postage prepaid, to Edmund S. Balboni of the Beal Companies, Agent for Pasquale and Violet Pagliuca, Taxpayers; Mary E. Pinkam-Langer, Agent for the Town of Barrington; and Chairman, Selectmen of Barrington.

Dated: February 22, 1995

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Valerie B. Lanigan, Clerk