

David M. Kashulines

v.

Town of Tilton

Docket No.: 11124-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$125,400 (land, \$32,400; building, \$93,000) on .333 acres with a four-apartment building (the Property). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. 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 this burden.

The Taxpayer argued the assessment was excessive because:

1) further physical and functional depreciation should have been applied (i.e., broken windows, porch and porch roof falling in, dry-rot, etc.), and in one-unit access to one bedroom is only through another bedroom; and

2) a report by RJC & Associates estimated the market value per-unit should be \$13,000 - \$17,000, placing a fair market value of \$65,000 on the Property.

The Town argued the assessment was proper because:

- 1) to address the Property's age and deferred maintenance, the quality adjustment factor was set at A3;
 - 2) additional physical and functional depreciation was given for the age and for the conversion to multi-family;
 - 3) the parcel is located in the commercial area and was assessed consistently with the values established for that district and neighborhood;
 - 4) Taxpayer's appraisal provided neighboring properties and seven sales in the general region to support its conclusion of market value. However, the appraisal lacks comparison and adjustments for variations in the features, conditions, size, number of bedrooms, design or layout, age, lot size or zoning compatibility, time adjustments and location;
 - 5) the Taxpayer's appraisal incorrectly time adjusted the comparable sales;
- and
- 6) Taxpayer's assessment is fair and reasonable when compared to neighboring properties (all similar in age, graded consistently, and have quality indexes within one point of each other.)

The board's inspector reviewed the assessment-record card, reviewed the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the assessment was proper. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation. In this case, the board rejects the inspector's

recommendation because it was made solely on information in the file and not an on-site inspection.

Board Findings

Based on the evidence, we find the Taxpayer failed to prove the Property assessment was disproportional.

The Taxpayer argued, based on an appraisal report performed by RJC & Associates, that the Property had a market value of \$52,000 to \$68,000. This estimate was based on two sales of multi-family units and greater consideration of the deferred maintenance problems with the building.

While the deferred maintenance problems are a matter of record and is a factor that must be considered in valuing the Property, the board places no weight on the Taxpayer's appraisal due to mathematical errors made in adjusting the two comparable sales to the assessment date of April 1, 1991. Taxpayer's comparable sale #2 sold on February 25, 1991, approximately one month prior to the assessment date. Nonetheless, the appraiser reduced the sales price by 17% for time alone based on a 1% per month calculation. It is clear that an error was made here. A proper time adjustment at 1% per month would result in an indicated sales price of \$99,000, not \$83,000. The Taxpayer's other sale, sale #6, sold on January 30, 1992, approximately 10 months after the assessment date. Based on the appraiser's rate of 1% per month decline, the sales price would need to be increased by 10%, not decreased as done by the Taxpayer's appraiser. Making the proper time adjustments for these two sales and equating them to a per-unit basis (sale #2 is a three-unit rather than a four-unit property) provides an indicated range of value per unit of \$22,550 to \$33,000. The Taxpayer's value per unit is \$27,500 ($\$110,000 \div 4$). While the board is unable to make any other adjustments, based on the evidence, for either locational or physical

differences of the comparables, the Taxpayer's unadjusted sales data indicates the Property is reasonably assessed.

Further in comparing the Taxpayer's photographs with the adjustments and notations on the property-assessment card, the board concludes that the Town had properly considered the deferred maintenance and functional obsolescence of the Property.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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 in 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 reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to David M. Kashulines, Taxpayer; and Chairman, Selectmen of Tilton.

Dated: June 30, 1994

Melanie J. Ekstrom, Deputy Clerk

David M. Kashulines

v.

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ORDER

This order relates to the "Taxpayer's" rehearing motion. The motion is denied for the following reasons:

1) Because the board inspector's report was not based on an on-site inspection but was based solely on information in the file, the board did not rely on his report. Further, it is the Taxpayer's burden to show the board that the assessment was disproportionately high or unlawful as of the date of assessment, April 1, 1991.

2) The July, 1992 Seavey letter of opinion should have been submitted with the Taxpayer's brief if the Taxpayer wished the board to rely on it in arriving at its decision. However, without additional documentation as to the basis for the value conclusion (i.e. what sales were used or what adjustments were made to the sales to arrive at the value conclusion), the board would be unable to review the soundness of the value conclusion.

3) The board fully reviewed the Taxpayer's appraisal report and reworked the report making the proper adjustments to the comparables. The result supported the Town's assessment. Further, the board reviewed the

photographs submitted by the Taxpayer and the assessment record card and concluded the Town properly considered the Property's deferred maintenance and functional obsolescence.

Request for rehearing denied.

SO ORDERED.

Member

Paul B. Franklin,

Member

Michele E. LeBrun,

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to David M. Kashulines, Taxpayer; and the Chairman, Selectmen of Tilton.

Dated:

Lanigan, Clerk

Valerie B.