Sleepy Hollow Motel, Inc.

v.

Town of Rye

Docket No.: 11652-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of $299,600 (land $141,700; buildings $157,900) on a 2.48-acre lot with a motel (the Property). (Two additional lots owned by the Taxpayer under The Estate of Robert J. Bonin are under appeal in Docket No. 11651-91PT.) 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 carried their burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the motel was vacant beginning sometime in 1989 through July 1991;

(2) the Property abuts the Coakley landfill superfund site (listed among the top 10) and its water was contaminated; the Taxpayer negotiated a contract

with the Town of Hampton to bring in water at a price of $20,000 sometime in 1991;

(3) the Property was again vacant from March 1992 through May 1993;

(4) a Purchase and Sale Agreement was executed in May 1993 but the Property is still being leased and the tenant is $11,000 delinquent on rent and is unable to get financing to purchase the Property; and

(5) the Property was appraised along with the abutting Lot 3 (5.86 acre tract, Docket No. 11651-91) for $250,000 in April 1990, $195,000 in September 1991 and a recent offer of $195,000 was made by an abutter for both lots.

The Town argued the assessment was proper because:

(1) the Town was not aware of the contamination of the water and felt the cost to cure (of $20,000) to get Town of Hampton water and an adjustment of $24,000 for lost income for a total adjustment of $44,000 would be appropriate for the tax year;

(2) the Coakley site is not visible from the road; and

(3) two comparable sales are the best evidence of value and support the assessment.

Board's Rulings

Based on the evidence, we find the correct assessment should be $192,200. This assessment was arrived at based on the following:

1) the April 1990 and September 1991 appraisals;

2) the Town's lack of consideration of the contamination;

3) testimony about the lease, the option and the Property's condition;

4) the Taxpayer's representation of several offers ranging from $300,000 to $195,000 beginning in early 1990; and

5) the board's judgment that the Property was worth at most $240,000 in 1991.

After the hearing, there could be no doubt that the Property was overassessed. The equalized value, $369,875, clearly exceeded any credible or supportable value determination. The Town did not consider the existence of the Coakley site and its impact on the Property and therefore could not support the assessment or the equalized value.

The board must focus on the date of assessment, April 1, 1991, and the full extent of the problems which existed as of that date. As of April 1, 1991 the motel was vacant due to water contamination caused by the Coakley site and had been vacant for some time. The Taxpayer was in the process of securing water from the Town of Hampton at a cost of approximately $20,000. The board concludes the Property's location in the superfund site impacts its value. The standard is clear: in arriving at a proper assessment, the board (and the Town) must consider all relevant factors. RSA 75:1 (must consider all evidence relative to property value); Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). There is a simple way to decide when adjustments are warranted. Envision two identical properties, except one property (the subject) is in a superfund site and the other is not. Then, ask would the market pay the same for the subject as for the other property? Certainly, the market would pay less for the subject and therefore some adjustments must be made. To ignore the negative impact of being in a superfund site would require abandonment of judgment and common sense.

We find the Town's material insufficient to overcome this common-sense

approach. Specifically, none of the evidence dealt with properties impacted by the superfund site.

Arriving at a proper assessment is not a science, but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence). Finally, judgment is the touchstone of reaching a value conclusion. The Taxpayer submitted sufficient evidence to suggest a range of value for the Property. The Taxpayer's appraisals and testimony dealt with this Property and an abutting 5.86 acre lot (owned under Estate of Robert J. Bonin) combined. Because the ownership is separate, and the properties can be separately conveyed, the board must consider each property separately and this decision is solely for the 2.48 acre lot and motel. The board has under a separate decision (Docket No. 11651-91PT) determined a proper assessment for the 5.86 acre lot.

Based on the evidence presented and the board's own judgment, the board finds a 30% economic adjustment to the Property is appropriate. Further, because the Property as of April 1, 1991 did not have on-site water and the Property therefore could not be utilized, the board has deducted the $25,000 assessment for water and sewer. (Note: This deduction should only be applied to the 1991 tax year because water was brought in from the Town of Hampton sometime in 1991.) The board, therefore, finds the proper assessment to be

$192,200 for an equalized market value of $237,300 ($192,200 divided by .81, 1991 equalization ratio).

If the taxes have been paid, the amount paid on the value in excess of $192,200 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992, 1993 and 1994. 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 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

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George Twigg, III, Chairman

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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 John M. O'Connor of Marvin F. Poer & Co., Agent for Sleepy Hollow Motel, Inc., Taxpayer; and Chairman, Selectmen of Rye.

Dated:June 22, 1995

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Valerie B. Lanigan, Clerk

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Sleepy Hollow Motel, Inc.

v.

Town of Rye

Docket No.: 11652-91PT

ORDER

This order responds to the Town's request for rehearing which is denied for failing to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3.

The Town stated the following reasons why a rehearing should be granted:

(1) the information submitted by the Taxpayer was not in the application for abatement filed with the Town (specifically relative to abutting the Coakley landfill superfund site);

(2) the Taxpayer failed to prove through comparable sales that the assessment was disproportionate; and

(3) the board used information irrelevant to the date of assessment.

The board will address each of the Town's concerns.

(1) The application for abatement to the Town and the appeal to the board were filed prior to the effective date of the board's current rules (September, 1993) which require that the Taxpayer state with specificity the grounds for the appeal (TAX 202.02(b)) and limit the Taxpayer's presentation to the issues raised in the appeal to the board (TAX 202.02(d)). The board

agrees that this information would have been helpful to the Town. However, the existence of the Coakley superfund site was common knowledge to the Town and a prospective buyer would consider the negative effect the site had on nearby properties. The Town failed to consider any effect to the Property until it was addressed at the hearing. The board did not find the Town's estimate of a cost to cure adequately addressed the impact on the Property's value and the board determined an adjustment of 30% was appropriate based on all of the evidence presented at the hearing and the board's own judgment.

The Town submitted with its request for rehearing a statement from the Rye Building Inspector that "no site in Rye has even been proven to be contaminated by the Coakley Landfill" and a copy of a service order dated June 8, 1990. The board finds these documents to be inconclusive. There is no doubt that the water was contaminated and negotiations were made with the Town of Hampton to bring in water. Whether the water became contaminated by the Coakley site or some other source, the problem still existed and the existence of the Coakley site would have a negative impact on the market. The service order does not state any specifics for the board to rely on. The "date order received," "date work to be done," and "date," are all the same, June 8, 1990. The order does not have a company name on it nor is there any certification from the Hampton Water Works that water was connected on that date.

(2) the Taxpayer submitted two appraisal reports dated April 1990 and September 1991 to support a lower value. The Town's equalization ratios for 1990 and 1991 were 77% and 81%, respectively. The appraisals, when time adjusted and equalized, supported the overassessment of the Property.

(3) the board did focus on the date of assessment, April 1, 1991. The board

considered all of the evidence presented including the appraisal reports, the Taxpayer's representation of offers beginning in 1990, the effect of the Coakley site, the evidence of the lease/option and the condition of the Property. The evidence of the lease/option was merely supportive of the value determined.

Motion for rehearing denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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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 John M. O'Connor of Marvin F. Poer & Co., Agent for Sleepy Hollow Motel, Inc., Taxpayer; and Chairman, Selectmen of Rye.

Dated: August 7, 1995

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Valerie B. Lanigan, Clerk