

Jade Realty Corporation

v.

Town of New Boston

Docket No.: 11682-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessments on 10 duplexes (the Properties) each assessed at \$150,400 (land \$45,000; buildings \$105,400). The Taxpayer owned 19 other properties that were not appealed. For the reasons stated below, the appeal for abatements is denied.

The Taxpayer has the burden of showing the assessments were 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 assessments were excessive because:

- (1) a market did not exist for the sale of the duplexes;
- (2) the highest and best use was as interim rental property, not for individual sales, with a switch to sales and completion of the development when the market improved; and

(3) a discounted cash-flow analysis showed the duplexes to be worth \$104,500 each.

The Taxpayer's representative stated he reviewed 17 of the Taxpayer's properties, but he did not review the Taxpayer's other 12 properties.

The Town argued the assessments were proper because:

(1) as matter of law, the Taxpayer did not show that all of its properties in the Town, viewed as an entire estate, were overassessed; rather, the Taxpayer only addressed the 10 properties appealed here;

(2) each duplex, i.e., one building with two units, can be separately sold;

(3) the Taxpayer incorrectly viewed the duplexes as a 20-unit rental property; (4) in 1991, the Taxpayer was offering the duplexes for \$155,000 each; and

(5) the available sales supported the assessments.

Board's Rulings

Based on the evidence, we find:

(1) the appeal must be denied because the Taxpayer, by not presenting evidence on all of the nonappealed properties, failed to prove that its entire estate in the Town was overassessed; and

(2) even if we had not so concluded, we would have found the Taxpayer did not show overassessment of the appealed properties.

Burden Concerning Value of Entire Estate

In determining the proper and proportional tax burden of any taxpayer, the board must "consider" all of the taxpayer's property in the municipality whether each property was appealed or not. Appeal of Town of Sunapee, 126 N.H. at 217; see also Bemis Bro. Bag Co. v. Claremont, 98 N.H. 446, 451 (1954); Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200 (1899). The court has

not defined the meaning of "consider" or which party has the burden of proof or the burden of persuasion with respect to the assessments on nonappealed properties. Clearly, the taxpayer has the burden to prove disproportionality of the assessment on the appealed property. Appeal of Town of Sunapee, 126 N.H. at 217. But does the taxpayer also have the burden to prove the taxpayer's other, nonappealed properties, were properly assessed? We think not. The municipality has the statutory responsibility to equitably assess all properties. See RSA 75:1, 8. In appeals, the assessment enjoys a presumption of correctness with the burden on the taxpayer to show overassessment. It would be strange and burdensome to require a taxpayer to prove the assessment on a nonappealed property was proportional.

Therefore, it is sufficient for a taxpayer to introduce the property-record cards on the nonappealed properties and to testify that, based on the taxpayer's review, the taxpayer concluded these assessments were correct. The municipality could then introduce evidence of underassessment. In its review, the board would consider the assessments on these other properties in light of the law on assessments and the specific evidence before the board.

Here, the Taxpayer's agent testified he reviewed only 17 properties and did not review the Taxpayer's other 12 properties. Therefore, the board is unable to even consider the assessments on the Taxpayer's nonappealed properties, and thus, we must find the Taxpayer did not carry its burden.

No Showing of Overassessment

Even if we had decided the first issue in the Taxpayer's favor, we still would have denied the appeal because, for the reasons stated below, the Taxpayer did not show the appealed Properties were overassessed.

(1) The Properties' highest and best use was as individually owned duplexes, not as rentals.

(2) There was insufficient evidence that the Taxpayer's asking prices were reasonable given the market. One could conclude the asking prices were based on the Taxpayer's desired return and not based on the market.

(3) The assessments were consistent with the Town's market evidence of duplex sales.

(4) As rental, the Taxpayer's rent appeared to be above market rent, resulting in a high vacancy rate.

(5) Even if the highest and best use was for interim rental and later sale, the Taxpayer's analysis failed to consider the future value of the sales.

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 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 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. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to William S. Petch, Agent for Jade Realty Corporation, Taxpayer; George W. Hildum, Agent for the Town of New Boston; and Chairman, Selectmen of New Boston.

Dated: August 30, 1995

Valerie B. Lanigan, Clerk

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