Bruce R. Randall

v.

Town of Plaistow

Docket No.: 12333-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of $145,150 (building only) on a 2-story condominium (the Property). 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 this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Taxpayer is assessed at a higher rate per square foot than other similar sized units; and

(2) the Town's addition of $5,000 for a walk-out basement exceeds its costs.

The Town argued the assessment was proper because:

(1) the developer was charging $5,000 for a walk-out basement when these units were sold in 1988 - 1989; and

(2) the Property was assessed in a consistent manner with other units in the complex.

Board's Rulings

Based on the evidence, we find the correct assessment should be $142,650. This assessment is ordered because:

1) the Taxpayer presented a reasonable argument that the walk-out basement due to its small size and interference of hot air ducts does not contribute $5,000 in the market value of the Property; and

2) the board finds however that there is some increased utility with a walk-out basement versus a fully in-ground basement and that the market would recognize some contributory value; the board finds half the Town's rate ($2,500) is a reasonable contributory value for a walk-out basement.

The board finds no further abatement is warranted because the Town consistently assessed for the additional plumbing fixtures and the Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer should have made a showing of the Property's 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.

If the taxes have been paid, the amount paid on the value in excess of $142,650 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 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Bruce R. Randall, Taxpayer; and Chairman, Board of Selectmen of Plaistow.

Dated: May 5, 1995

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Valerie B. Lanigan, Clerk

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