Robert C. and Julie W. Southard

v.

Town of Bennington

Docket No.: 12878-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of $115,100 (land, $20,500; building, $94,600) on .8 acres with building (the Property). The Taxpayers 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 Taxpayers have the burden of showing the assessment was 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.

The Taxpayers argued the assessment was excessive because:

1) the Property was purchased in January, 1992 for $95,000;

2) a discrepancy in square footage between the Town and the Whittemore appraisal exists;

3) a December 1991 appraisal estimated the fair market value to be $95,000; and

4) the Town's comparables and existing assessment data is flawed.

The Town argued the assessment was proper because:

1) after a re-measurement of the Property an adjustment was made in the replacement cost and a 3% functional depreciation to address the square footage was applied to the building;

2) the Taxpayers' appraisal provided an artificially low value and the comparables used are invalid, i.e., located in other towns and priced to sell quickly;

3) the Taxpayers rented the Property with the option to purchase for two years prior to the sale;

4) Taxpayers' assessment was well within those established value parameters developed during the 1991 revaluation; and

5) comparing two qualified transactions, and making proper adjustments, demonstrated Taxpayers' assessment was proper.

Board Findings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed. The Taxpayers stated they purchased the Property for $95,000. However, the Taxpayers reportedly had been renting the subject Property with an option to purchase. Therefore, it was not exposed to the marketplace as required of fair market sales. Further, the board was not supplied with any information as to the agreed upon rent to be applied to the purchase price, if any, or any other specifics regarding the purchase.

The board notes that the Taxpayers' appraisal shows an indicated selling price of $112,000 (in two places). The appraiser's estimate of value was as of December 17, 1991. No time adjustment was made or discussed to bring the appraised value to April 1, 1992, the date of assessment for the tax year under appeal. The appraisal report estimates the cost less depreciation to be $112,571. According to the Town's report, the appraiser's comparable number 1 was not an arms-length transaction. Mr. Lecain had to sell his house at a greatly reduced price (listed for $150,000 and sold for $95,000) because he was scheduled to enter a retirement community and needed the proceeds from the sale of his house for that purpose. This suggests the strong possibility that the sale was not an arms-length transaction.

The Town made a (3% functional depreciation) living area adjustment to reflect the discrepancy between the Town's measurement of living area and the bank appraiser's figured living area square footage.

The board finds the Taxpayers failed to prove disproportionality. The board is not obligated or empowered to establish a fair market value of the Property. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine whether the assessment has resulted in the Taxpayers paying an unfair share of taxes. See Id. 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).

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 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

_____
George Twigg, III, Chairman

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Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert and Julie Southard, Taxpayers; and Chairman, Selectmen of Bennington.

Dated: February 22, 1995 _____

Melanie J. Ekstrom, Deputy Clerk