Henry Elkins

v.

Town of Thornton

Docket No.: 12887-92-PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of $76,600 on a condominium unit at Waterville Acres (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 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) a fully furnished unit in the complex sold for only $60,000 -- the unit is larger and newer than the Property and the original purchase price in 1974 was $20,000 more than the Property;

(2) a comparable unit has been listed for sale for $49,000 for over a year with no buyer;

(3) a realtor estimated a $45,000 value; and

(4) the Property was originally purchased for only $26,500.

The Town argued the assessment was proper because:

(1) the assessment was reduced to $73,600 for tax year 1993 to address the Taxpayer's concerns; and

(2) all units within the complex were assessed equitably, and all assessments are well within the range of each other.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $73,600. The board finds this assessment proper because:

1) the Town reduced the assessment to this level in 1993 based on the arguments submitted by the Taxpayer;

2) while the Taxpayer did not submit documented evidence of sales and listings, the Taxpayer's submittal was given some weight and does indicate the condominium was slightly overassessed;

3) the revised assessment of $73,600 equates to a market value estimate of $55,760 by applying the Town's 1992 equalization ratio as determined by the Department of Revenue Administration of 132% ($73,600 ÷ 1.32); and

4) the indicated market value of $55,760 is more consistent with the Taxpayers unsubstantiated sales and opinion of value.

No further abatement is warranted. The Taxpayer asked the board to base its decision on an unsubmitted realtor's opinion of value. The board,

however, was unable to rely upon the opinion of value because the opinion did not include the basis for the value conclusion. Specifically, the opinion did not indicate what sales were used or what adjustments were made to the sales to arrive at the value conclusion. Without such information, the board and the municipality are unable to review the soundness of the value conclusions.

If the taxes have been paid, the amount paid on the value in excess of $73,600 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 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 "reconsideration motion") of this decision must be filed within thirty (30) days of the clerk's date below, <u>not the date this decision is received</u>. 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

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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 Henry Elkins, Taxpayer; and the Chairman, Selectmen of Thornton.

Dated: January 17, 1995

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Lynn M. Wheeler, Deputy Clerk