Nicholas and Ann M. Haddad

v.

Town of Freedom

Docket No.: 12897-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of $80,000 on condominium unit #59 at Freedom Village (the Property). The Town did not appear but consistent with our Rule, TAX 202.06(h), the Town was not defaulted. This decision is based on the evidence presented to the board. 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 prove the Property was disproportionately assessed.

The Taxpayers argued the assessment was excessive because:

(1) sales of units from March 1990 through May 1992 demonstrated overassessment;

(2) in 1991 there were 6 units left, the bank repossessed these units from the developer and subsequently sold all 6 in 1994 for $55,000;

(3) several owners (approximately 15) lost their units to foreclosure; and

(4) the Property was overassessed by approximately $25,000.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not prove overassessment. The Taxpayers' evidence did not establish the Property's fair market value. To carry their burden, the Taxpayers 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 assessment 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.

The Taxpayers' market evidence consisted of five sales that occurred between March 1990 and May 1992. The Taxpayers, however, were unable to provide sufficient information to the board showing these sales were qualified fair market sales. The Taxpayers informed the board that the developer was in financial trouble and that the bank had taken possession of the development in 1991. Moreover, the bank apparently hired a liquidating company to sell the remaining built units, and the bank completed construction on the six unbuilt units, selling these units in 1993 for $55,000 each. The Taxpayers stated the $55,000 selling prices were "wholesale prices".

In the 1990 to 1992 sales, the board reviewed the revenue department's equalization ratio study to determine whether the revenue department had used these sales in the ratio studies (1991 and 1992 ratio studies attached). Unfortunately, the selling prices presented by the Taxpayers did not always match up with the selling prices in the ratio studies. However, the studies

included several properties with the same $80,000 assessment and with purchase prices close to those the Taxpayers provided. The ratio studies show the revenue department used two of the sales in the studies, but did not use four of the sales, noting the sales were either sales by a liquidating company or sales by a bank. These remarks are consistent with the evidence presented to the board. It was the Taxpayers' burden to show the presented sales were fair market sales, and this was not done. Additionally, the Taxpayers did not review all of the sales in this development, and they presented only sales of people they knew. The Taxpayers also did not present any sales of other condominium units in the Town.

The issue of whether bank sales qualify as market value sales was addressed in Society Hill at Merrimack Condominium Association v. Town of Merrimack, 139 N.H. 253 (1994). In that case, the supreme court affirmed the superior court's conclusion that: a) the proffering party had the burden to show the sales qualified as market value sales; and b) bank sales did not meet the definition of market value. This board has consistently concluded bank sales are not market value sales because of the bank's motivation and because of questions concerning whether the bank exposed the property to the market for a reasonable marketing period. Finally, the board's inspector has studied bank sales, and he has found that bank sales normally sell for less than the market value.

Based on the above analysis, the board finds the Taxpayers did not show overassessment.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of
Haddad v. Town of Freedom
Docket No.: 12897-92PT

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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Ignatius MacLellan, Esq., Member

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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 Nicholas and Ann M. Haddad, Taxpayers; and Chairman, Selectmen of Freedom.

Dated:October 27, 1995

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Valerie B. Lanigan, Clerk

Nicholas and Ann M. Haddad

v.

Town of Freedom

Docket No.: 12897-92PT

ORDER

This order relates to the "Taxpayers'" rehearing motion, which is denied. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3.

The board will address some of the issues raised in the rehearing motion; the decision already addressed many of the issues.

First, the Taxpayers are rightfully dismayed by the "Town's" failure to appear at the hearing. However, the Taxpayers are mistaken that the Town's failure automatically should result in a granted appeal. Under TAX 202.06(h), the board is required to hold a hearing and to render a decision based on the evidence in the file even if a municipality does not appear. The board adopted this rule because it would be unfair to the other taxpayers in a municipality to simply grant an abatement when the municipality failed to appear. The test in these appeals is proportionality and remains proportionality even if a municipality does not attend the hearing.

The decision adequately addresses the Taxpayers' other grounds concerning why the board did not accept the Taxpayers' evidence. Basically, the board did not find the Taxpayers' evidence to be probative evidence of market value and of disproportionality. The board discussed the lack of sales from other condominium developments because the Taxpayers' evidence in this development was not shown to be market evidence. Additionally, in assessment appeals, the question is proportionality, and thus, it is relevant to look at other developments for sales. Finally, the board reviewed the tape and confirmed that Mr. Haddad twice referred to the bank sales as "wholesale" and "wholesale liquidation." Tape at 528, 550.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that copies of the foregoing order have this date been mailed, postage prepaid, to Nicholas and Ann M. Haddad, Taxpayers; and Chairman, Selectmen of Freedom.

Dated:December 14, 1995

Valerie B. Lanigan, Clerk