

Charles F. Coffey

v.

Town of Jefferson

Docket No.: 12921-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$469,700 (land \$77,800; buildings \$391,900) on a 7.0-acre lot with a motel and snack bar (the Property). For the reasons stated below, the board finds the settlement agreement not binding. Additionally, the appeal for abatement is denied, but the Town shall reduce the assessment, as recommended, to \$439,100.

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 failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

(1) the Town agreed to settle this appeal with a \$375,000 assessment for the 1992 tax year but then withdrew the offer, stating the case should go to hearing;

(2) a June 1992 bank appraisal estimated a \$380,000 market value; and

Docket No.: 12921-92PT

(3) the Property should be assessed at approximately 50% of the Lantern Inn because the Property has approximately half the motel units, campsites and acreage.

The Town argued the assessment should be reduced to \$439,100 to reflect corrections to the snack bar after an interior inspection. The Town argued the revised assessment was proper because:

(1) the Property was assessed very similarly to the Lantern Inn using the same methodology; the Lantern Inn had higher values on the campsites and the motel because it was larger, superior quality and newer; and

(2) the gift shop at the Lantern Inn is small and essentially a souvenir store; the Property's snack bar is larger and serves food to the general public.

Board's Rulings

Before addressing the appeal, the board must discuss the settlement agreement that the Taxpayer asserted should be enforced. It does appear a settlement agreement was reached. The board, however, will not enforce the agreement because to do so would result in disproportionate taxation. Under our rule TAX 201.23 (c): "The Board shall reject any settlement of a Property-Tax Appeal if the settlement would result in disproportionate *** or unfair assessment ***."

Given the Taxpayer's appraisal evidence and the Town's position concerning the mistake they made by agreeing to the \$375,000 figure, the board finds the settlement, if enforced, would result in the Taxpayer being underassessed.

Therefore, the board will not enforce the settlement agreement.

Page 3
Coffey v. Town of Jefferson
Docket No.: 12921-92PT

Concerning the appeal, the board finds the Taxpayer did not show

overassessment, but the board orders the Town to use the \$439,100 assessment, which would reflect a revision due to the snack bar's condition.

The Taxpayer basically made two arguments: 1) the assessment exceeded the \$380,000 appraisal; and 2) the assessment was high when compared to the Lantern Inn.

While assessments must be based on market value, see RSA 75:1, assessments sometimes exceed market values. However, abatements are not warranted just because assessments exceed market values unless the taxpayer shows he or she was assessed at a higher percentage of market value than other taxpayers in the municipality. The question is whether the appealed assessment was proportional to the general level of assessment in the municipality. Here the 1992 assessment level was 132% as determined by the revenue department's equalization ratio. This means the assessments were higher than market values. The Property's equalized assessment, using the Town's recommended \$439,100 assessment, was \$332,650 ($\$439,100 \div 1.32$). This equalized assessment should provide an approximation of market value. Thus, to carry his burden, the Taxpayer should have shown the Property was worth less than \$332,650. This was not done. Rather, the Taxpayer's appraisal estimated a \$380,000 value, and overassessment was not shown.

Concerning the Taxpayer's comparison to the Lantern Inn, we find the Town adequately explained how the two properties were assessed, and we find no showing of disproportionate assessment.

If the taxes have been paid, the amount paid on the value in excess of \$439,100 shall be refunded with interest at six percent per annum from date Page 4 Coffey v. Town of Jefferson Docket No.: 12921-92PT

paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX

203.05, unless the Town has undergone a general reassessment, 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. Note: The board understands the Town underwent an update in 1993, but there is a question about whether the update qualified as a "general reassessment" under TAX 203.05 (c) (1) (copy of TAX 203.05 and RSA 76:17-c enclosed). The board initially leaves it up to the Town to comply with RSA 76:17-c and TAX 203.05. If the Taxpayer disagrees with whether the Town has complied, the Taxpayer may file a motion under TAX 203.05 (j).

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.

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 Charles F. Coffey, Taxpayer; Gary Roberge of Avitar (courtesy copy); and Chairman, Selectmen of Jefferson.

Dated: October 19, 1995

Valerie B. Lanigan, Clerk

0006

Charles F. Coffey

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Town of Jefferson

Docket No.: 12921-92PT

ORDER

Based on the Town's November 30, 1995 letter, the Town has properly refunded the Taxpayer for his 1992 overassessment. Because the total assessment in 1993 and 1994 was less than what the board ordered in its decision dated October 19, 1995, no further refund was required for those subsequent years.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Charles F. Coffey, Taxpayer; and Chairman, Board of Selectmen.

Dated: December 19, 1995

Melanie J. Ekstrom, Deputy Clerk

004