Joseph Casey

v.

Town of Boscawen

Docket No.: 13118-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of $108,300 (land $67,200; buildings $41,100) on a .5-acre lot with a house (the Property). The Taxpayer also owned, but did not appeal, a vacant 60-acre lot in current use assessed at $3,840. 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 denied.

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 and prove disproportionality.

The Taxpayer argued the assessment was excessive because:
(1) the Town changed the zoning from residential to commercial, resulting in a

50% increase in taxes;

(2) a similar property sold in 1993 for only $39,000;

(3) the $33,600 location-use credit should be $75,000; and

(4) the Property has been zoned residential since the 1800's and the zoning should have been grandfathered rather than applying a location-use credit.

The Town argued the assessment was proper because:

(1) the location-use credit was applied to address the zoning change and was subsequently increased from $30,000 to $33,600; and

(2) the Taxpayer's $39,000 comparable sale also received the location-use credit.

Board's Rulings

Based on the evidence, the board finds an original location-use adjustment of $30,300 was made to recognize that the subject Property is a residential use in a commercial zone. A correction was subsequently made to further reduce the $111,900 assessment of land and buildings by $3,600 to the $108,300 figure. The equalized ratio for the tax year under appeal (1992) was 1.20. The calculated market value after factoring the 1992 assessment would be $90,250 ($108,300 ÷ 1.20).

The Taxpayer offers a 1993 sale of a "similar" property, which sold for $39,000 with no adjustments. Furthermore, the Taxpayer lays no foundation for his proposed $75,000 deduction for location use.

In his appeal, the Taxpayer states, "In order of fairness, the BTLA should find for the homeowners who lived in the residential zone for many years and should have been grandfathered in."

Municipalities have the authority to vote to change existing zoning. The pre-existing uses are at the same time grandfathered in the newly designated zone for improved properties.

In recognition of the fact that a newly created commercial designation does change the economic highest and best use of already existing improved properties, many municipalities have adopted assessing techniques to protect owners of those previously zoned residential properties from paying sharply increased taxes as a result of the newly created commercial values. The Town of Boscawen uses the location-use technique to maintain an assessment based on a continuing residential use. When the use becomes more intensive, the location-use adjustment ceases.

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 Taxpayer 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).

The Taxpayer has failed to show that his assessment is unfair, unequal or disproportionate to other similar properties' assessments in a residential zone.

We find the Taxpayer failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

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

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George Twigg, III, Chairman

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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 Joseph Casey, Taxpayer; and Chairman, Selectmen of Boscawen.

Dated: March 14, 1995

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Lynn M. Wheeler, Deputy Clerk

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