Francis X. Turcotte

v.

City of Laconia

Docket No.: 13971-93-PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1993 assessment of $292,600 (land $137,400; buildings $155,200) on a 18,645-square-foot waterfront lot with a single-family home (the Property). For the reasons stated below, the appeal for abatement is denied, but the board revises the assessment to $292,400 to reflect a correction in the land size.

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 house was approximately 40-45% incomplete in April 1993 and was still incomplete when the Taxpayers moved in in December 1993;

(2) an estimated total cost to construct the building was $128,000 with $38,600 estimated value to complete as of April 1993;

(3) the City assessed the land based on an incorrect land calculation;

(4) 3% depreciation should be applied for a 10-foot drainage easement on the Property and 5% for a nearby sewer-pump house that emits an occasional odor and occasional noise;

(5) the prison annex entrance is located approximately 2,000 feet from the front door, warranting 10% economic obsolescence; and

(6) the fair market value as of April 1993 was $200,000.

The City argued the assessment was proper because:

(1) an appraiser met with the Taxpayers to determine the percentage incomplete, and 25% (or $37,076 equalized) was allowed;

(2) the City found no adjustment was warranted for the drainage easement because it is within the setback area, preventing the Taxpayers from building in that location;

(3) an abutter sale, (Anderson), closer to the pump house, sold in June 1993 for $330,000, and the buyers had knowledge of the prison;

(4) another lot in the development sold in April 1994 with the purchasers (McDonald) having knowledge of the prison;

(5) these two sales demonstrated property values were not affected by the nearby prison; and

(6) the sales supported the equalized assessment.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be $292,400 as recalculated by the City, using 16,826 square feet for the lot size. Other than the correction for the lot size, the board finds no other adjustment is warranted for the following reasons.

1) The Property's equalized (adjusted) assessment was $221,500 ($292,400 assessment ÷ 1.32 equalization ratio). To show overassessment, the Taxpayer should have shown that the Property was worth less than $221,500 on April 1, 1993. The Taxpayer did not present any credible evidence of the Property's fair market value. To carry his burden, the Taxpayer 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 City. 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.

2) The Taxpayer was unprepared to present supportable evidence concerning the construction costs. Moreover, the Taxpayer did not show how his actual construction costs related to market construction costs or market value. The Taxpayer stated the total construction cost for the house, site and utilities was approximately $128,000, but the Taxpayer did not present any documentation or itemization to support this statement. The board is always reluctant to accept statements without backup information that the board can review. Additionally, because the Taxpayer was acting as developer and general contractor, there is a question about whether his cost estimate equated to market cost estimates.

3) The City's 25% incomplete factor appeared reasonable. Specifically, the City's 25% figure equated to $37,100 remaining to be completed, and this coincided with the Taxpayer's $38,600 estimate to complete.

4) The Taxpayer did not provide sufficient evidence to support his assertion that the sewer easement, pump house and prison affected the Property's value. Moreover, the City presented sufficient arguments to overcome an assumption that these factors had an adverse value impact. Specifically, the City introduced two nearby sales, and the asserted factors did not seem to adversely affect values in those sales.

If the taxes have been paid, the amount paid on the value in excess of $292,400 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, unless the City has undergone a general reassessment, the City shall also refund any overpayment for 1994 and 1995. Until the City undergoes a general reassessment, the City 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 "rehearing 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 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 Francis X. Turcotte, Taxpayer; and Chairman, Laconia Board of Assessors.

Date: September 16, 1996

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Valerie B. Lanigan, Clerk

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