Regina Martinonis

v.

Town of Kingston

Docket No.: 14726-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of $261,300 (land $134,700; buildings $126,600) on Map 10 "Lot 3", an 8.0-acre lot with a four-unit apartment building (the Property). The Taxpayer also owns Map R8 "Lot 47", a 1.3-acre lot with an eight-unit apartment building which was settled prior to the hearing. 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 the burden and proved disproportionality.

The Taxpayer argued the assessment on Lot 3 was excessive because:

(1) the Property is just across the street from Lot 47 and the Town accepted the income and expense statement for that property;

(2) the lot cannot be subdivided due to insufficient frontage and wetlands;

(3) the Property receives no town services (water, sewer, trash removal, snow plowing); and

(4) the income and expense statement supports a fair market value of $86,000.

The Town recommended a revised assessment of $215,250 and argued the adjusted assessment was proper because:

(1) the sales comparison approach is the proper method to reflect the Property's value;

(2) two sales in neighboring towns support the higher end of value;

(3) based on sales, a gross income multiplier of 6.0 and value per bedroom of $25,000 support a reconciled value of $175,000;

(4) a revised assessment of $215,250 is proper.

Board's Rulings

Based on the evidence, we find the fair market value to be $150,000 for a proper assessment of $184,500 for the following reasons.

While the board considered the Taxpayer's income approach, we found it did not accurately reflect the fair market value of the Property. The Taxpayer admitted that the Property was worth more than the $86,000 indicated by the income approach.

The board gives little weight to the value contained in the assessment record card because it was based on a 1987 reassessment and market data significantly different than the 1993 tax year under appeal. The board does give some weight to the Town's two comparable sales, albeit the information about the comparables and their analyses were minimal. However, based on those comparables and the board's general knowledge and experience,

the board finds a gross rent multiplier of 6.0 is reasonable. The board has revised the Property's gross income by estimating what the rent would be if the tenant had paid the heat. Multi-family residences of this size more frequently have the heat paid by the tenant. Thus any analysis by a gross rent multiplier is more accurate if it is based on the norm. We have estimated the rent would be approximately $520 per month (rather than $595) and would have a gross income of $24,960. Multiplying this gross income by a factor of 6.0 indicates a market value of approximately $150,000. The board also finds this is consistent with the agreed upon assessment of Lot 47.

The Taxpayer stated the Town services were not provided. Lack of municipal services is not necessarily evidence of disproportionality. As the basis of assessing property is market value, as defined in RSA 75:1, any effect on value due to lack of municipal services is reflected in the selling price of comparables and consequently in the resulting assessment. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

If the taxes have been paid, the amount paid on the value in excess of $184,500 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 Town has undergone a general reassessment, the Town shall also refund any overpayment for 1994 and 1995. 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 "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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, 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 Regina Martinonis, Taxpayer; and Chairman, Selectmen of Kingston.

Dated: March 11, 1996

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Valerie B. Lanigan, Clerk