

Agassiz Street Realty Trust

v.

Town of Bethlehem

Docket No.: 14779-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$128,550 (land \$23,550; buildings \$105,000) on real estate consisting of a multi-family dwelling on a .41 acre lot (the Property). 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 have 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) a December 1993 appraisal estimated the market value at \$65,000.

The Town argued the assessment was proper because:

- 1) the assessment was abated from \$190,500 to \$128,550 based on an assessment analysis which indicated a per-unit value of \$21,000;
- 2) applying the Town's 1993 equalization ratio of 146% to the abated value of \$128,550 indicates a market value of approximately \$88,000;
- 3) all the comparables in the Taxpayer's appraisal are either bank or FDIC sales and thus are not market value sales; and
- 4) three sales of multi-family properties in the adjoining town of Franconia, while in superior locations, generally support the assessment.

Board's Rulings

Assessments must be based on market value. See RSA 75:1. Due to market fluctuations, assessments may not always be at market value. A property's assessment, therefore, is not unfair simply because it exceeds the property's market value. The assessment on a specific property, however, must be proportional to the general level of assessment in the municipality. In Bethlehem, the 1993 level of assessment was 146% as determined by the revenue department's equalization ratio. This means assessments generally were higher than market value. The Property's equalized assessment was \$88,000 ($\$128,550 \text{ assessment} \div 1.46 \text{ equalization ratio}$). This equalized assessment should provide an approximation of market value. To prove overassessment, the Taxpayer would have to show the Property was worth less than the \$88,000 equalized value. Such a showing would indicate the Property was assessed higher than the general level of assessment.

The Taxpayer's sole evidence of market value was the December 1993

appraisal with an estimated value of \$65,000. The board finds the appraisal

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was based on primarily the market and income approaches to value. The board places no weight on the value conclusion of the 1993 appraisal because: 1) the market approach used sales that were either FDIC or bank-related sales; and 2) the income approach used the before abated real estate taxes as an expense.

The board has consistently held that bank sales are by definition not arms'-length transactions and require some adjustment because banks are not your typically motivated sellers. The board has also seen both through its own studies and the studies of others, that bank sales typically sell for less than market sales. While a bank may accept an appraisal for lending purposes based on such bank sales (obviously to be conservative in their liability), the board finds that a value based on such sales does not reflect market value as required by RSA 75:1.

The income approach in the appraisal used taxes as an expense as opposed to including them in the effective tax rate as part of the overall capitalization rate. When using the income approach for determining a proper assessment, the effect of taxes should be included in the capitalization rate and not as an expense because the magnitude of the taxes is dependant on the final determination of value. Further, the taxes actually used by the appraiser, in this case, exceeded the pre-abated taxes (based on a previous assessment of \$190,500) and further inaccurately reduced the indicated value of the Property.

Lastly, the Town's three comparable sales of multi-family units in Franconia, while having significant differences, generally indicate that the

Town's revised assessment and indicated market value of \$88,000 is reasonable and proportional to market value.

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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. 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

Paul B. Franklin, Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Steven D. Singer, Esq., counsel for the Taxpayer;

and Chairman, Selectmen of Bethlehem.

Date: February 2, 1996

Lynn M. Wheeler, Deputy Clerk

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