Robert and Annemarie DiChiara

v.

Town of Langdon

Docket No.: 15017-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of $121,650 on a single family home on 5.07 acres (the Property). The Taxpayers 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 Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

1) the values placed on the hearth, porch/deck, and utility shed were too high;

2) comparable properties were assessed lower; and

3) an opinion of value dated 3/31/94 estimated a fair market value of $101,000.

The Town argued the assessment was proper because:

1) the Town was revalued in 1990 and all standard assessing values and methods were used and continue to be used; and

2) the values placed on the Taxpayers' hearth, porch/deck, and utility sheds were based on actual replacements values.

BOARD FINDINGS

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed. The Taxpayers submitted an appraisal report and asked the board to rely on this report and find a market value of $101,000. The board reviewed the report and placed little weight on the appraiser's comparable sales analysis for the following reasons.

1) The appraisal was prepared for financing purposes which in the board's experience is generally conservative.[1]

2) The appraiser used two sales outside of town. While desirable to have comparables from the same town as the subject, there is no statute prohibiting use of out of town comparables as long as adequate adjustments are made, if warranted. (The appraiser gave no explanation of his $5,000 location adjustment to comparable #3.)

3) The appraiser stated "The subject's estimated site value has been reconciled from several land sales in an around the Town of Langdon." However, these sales were not mentioned anywhere in the report; therefore, the board had

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[1] The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b); Appeal of Nashua, 138 N.H. 261, 264-265 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

no way to determine if the sales and appraiser's analysis were appropriate.

4) The appraiser stated that no time adjustments were made due to the "appearance" of a currently stable market. There was no documentation to support such an assumption.

5) No explanation was given for the many other adjustments made to the comparables.

In short, the board was unable to review the soundness of the value conclusion based on the lack of information to support the adjustments. The Taxpayers' appraiser also performed a cost analysis which the board has reviewed and determined that this analysis does support the Town's assessment.

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 this municipality, the 1994 level of assessment was 104% as determined by the revenue department's equalization ratio. This means assessments generally were slightly higher than market value. The Property's equalized assessment was $117,000 ($121,650 assessment ÷ 1.04 equalization ratio). This equalized assessment should provide an approximation of market value. The Taxpayers' appraiser arrived at an indicated value of $118,860 by the cost approach which does support the Town's equalized assessment.

The Taxpayers further argued that their lower cost in building the hearth, 2 utility sheds and deck should be reflected in the assessment. The Town relies on the market approach in estimating the contributory value of

these

improvements. This approach showed the market was recognizing more than what the Taxpayers actual costs were. Further, the Taxpayers' appraiser used a value of $3,345 for the deck and sheds which is very close to the number used by the Town.

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. This, 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

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George Twigg, III, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert and Annemarie Dichiara, Taxpayers; and Chairman, Board of Selectmen.

Date: May 10, 1996

Valerie B. Lanigan, Clerk

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