Joy and William O'Connor

v.

Town of Londonderry

Docket No.: 15713-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of $190,000 on a single-family home (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 but the Town is ordered to use the Town's recommended assessment of $169,800.

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 their burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

1) the Property was purchased in May 1992 for $125,000 after protective covenant and zoning violations were discovered;

2) the house is extremely overbuilt for the neighborhood and has a big garage;

3) two appraisals indicated overassessment -- $145,000 (December 1991) and $146,000 (February 1994);

4) the "BTLA's" 1992 decision valued the Property at $165,150 ($109,000 ordered assessment ÷ .66 equalization ratio); and

5) a proper assessment should be between $145,000 and $155,700 ($109,000 1992 ordered assessment ÷ .70 1993 equalization ratio).

The Town argued the assessment was proper because:

1) the assessment was reduced from $195,876 after the Taxpayers' applied for an abatement;

2) the Taxpayers' February 1994 appraisal presented an artificially low value; and

3) a $169,800 assessment would be a fair assessment.

BOARD FINDINGS

The board finds the proper assessment to be $169,800. The board reviewed this identical case for the 1992 tax year (docket no.: 13583-92PT) and granted the appeal on August 9, 1995. While the board is not bound by its prior decisions, it is authorized to give these prior decisions appropriate weight. Appeal of Public Service of New Hampshire, 120 N.H. 830, 833 (1980) (board may assign appropriate weight to its prior decisions). The board did considerable analysis for the prior appeal. However, the board, upon review of the evidence and decision in the 1992 appeal and a review of the briefs and appraisal reports submitted for this appeal, concurs with the Town in its analysis of the Taxpayers' 1994 appraisal. Specifically, (1) the Taxpayers' gross living area and basement adjustments were low; and (2) adjustments to comparable #3 for

quality and condition were excessive. The board found in its prior decision that: (1) longer than normal marketing exposure may be necessary because of the dwelling's large size and specific improvements as a former daycare; and (2) the detached garage lacks full utility due to the lack of a driveway and good access to the second floor.

The board finds, based upon a review of the Town's brief and the appraisal report, that the Town's recommended adjustments to the appraisal report (gross living area, adjustment to comparable #3, and applying a 20% functional obsolescence due to the overbuilt nature of the Property) are reasonable and further finds that the recommended assessment of $169,800 or a market value of $175,050 ($169,800 ÷ .97) is reasonable and proper.

If the taxes have been paid, the amount paid on the value in excess of $169,800 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 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 "reconsideration 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 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

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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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Joy and William O'Connor, Taxpayers; and Chairman, Selectmen of Londonderry.

Date: October 24, 1996

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Valerie B. Lanigan, Clerk