Lawrence D. Smith

v.

Town of Surry

Docket No.: 17416-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of $197,400 (land $65,550; buildings $131,850) on a 1.04-acre lot with a single-family home (the "Property"). 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 a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:
(1) several realtors had reviewed the Property and estimated a market value near $150,000; and

(2) the sale of a very similar, abutting property (Buchanan) for $148,500 was an arm's length transaction and indicative of market value.

The Town argued the assessment was proper because:

(1) the Town relies exclusively on its part time assessor, Mr. Camp, who used the same consistent methodology to assess the Property; and

(2) there have been very few assessment appeals, indicating that assessments in general are equitable.

Board's Rulings

The board finds the appropriate assessment to be $185,600 based on a market value finding of $160,000 and the Town's equalization ratio of 1.16 ($160,000 x 1.16 = $185,600). In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). However, the existing assessment process allocates the total value between land value and building value. The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.

The Taxpayer testified he had several realtors review his Property and offer an opinion of market value. All of the realtors estimated the value to be in the $145,000 to $150,000 range. However, the Taxpayer did not provide the board with any documentation as to the methodology used by the realtors. If the Taxpayer had provided the documentation, the board would have been able

to review the soundness of the value conclusions made by the various realtors. However, the Taxpayer did provide the board with sales information regarding the sale of an abutting property known as the Buchanan property. This property was very similar in style, quality, value and date of construction as the Property. This property had been on the market through a realtor for approximately two years prior to selling and the reported selling price was $148,500. The Taxpayer indicated this was the best evidence available to show that his Property was overassessed. While the board concurs that this sale is a good indicator that the Property is overassessed, it is not conclusive evidence inasmuch as no other documentation was provided to detail the differences between the Property and the Buchanan home. For this reason, the

board has not reduced the assessment to the $150,000 level requested by the Taxpayer.

The Town, represented by Mr. Sweeney, chairman of the board of selectmen for the Town of Surry, relied on their part-time assessor who does reviews and pickups as necessary. The Town believed the assessment was arrived at using a consistent methodology and was in line with other assessments in the Town. The board finds that while consistent methodology used in assessing may provide some consistency in assessments, once the Town receives a property-specific appeal, it is obligated to provide a property-specific review and consider all data available. The Town must annually review its assessments and adjust those that have declined or increased more in value than values generally changed in the Town. RSA 75:8 states:

> The assessors and selectmen shall, in the month of April in each year, examine all the real estate in their respective cities and towns, shall reappraise all such real estate as has changed in value in the year next

> preceding, and shall correct all errors that they find in the then existing appraisal ***.

See also, 73:1, 73:10, 74:1, 75:1. As stated in Appeal of Net Realty Holding Trust, 128 N.H. 795, 799 (1986), a fair and proportionate tax can only be achieved through a constant process of correction and adjustment of assessments. In yearly arriving at an assessment, the Town must look at all relevant factors. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

The Town failed to submit any sales data to support its assessment. RSA 75:1 requires that assessments be in line with market value. Therefore, providing sales is essential for the board to compare the Property's assessment with market value and the general level of assessment in the municipality. See Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986).

If the taxes have been paid for the tax year 1997, the amount paid on the value in excess of $185,600 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 1998. 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

_____
Michele E. LeBrun, Member

_____
Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Lawrence D. Smith, Taxpayer; and Chairman, Selectmen of Surry.

Date: March 16, 1999

_____
Valerie B. Lanigan, Clerk