

New Hampshire Veterans Association

v.

City of Laconia

Docket No.: 17946-98EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1998 denial of the Taxpayer's request for a veteran's exemption as provided under RSA 72:28 on Map 97, Lot 127A2, a restaurant on a .23-acre lot (the "Property") with an assessment of \$104,300 (land \$67,200; buildings \$37,100). The Taxpayer also owns abutting property identified as map 97, lot 127-2 that is currently receiving a veteran's exemption but is not an issue in this case. For the reasons stated below, the appeal for abatement on the Property is granted.

The Taxpayer has the burden of showing it was entitled to the statutory exemption or credit for the year under appeal. See RSA 72:23-m; TAX 204.06. We find the Taxpayer carried this burden.

The Taxpayer argued it was entitled to the veteran's exemption because:

- (1) the lease for the restaurant is for the building only;
- (2) the amount of land assessed by the City is excessive;
- (3) the Property cannot be sold as it is on the National Historic Register and the Property reverts

to the State of New Hampshire if the Veteran's Association ceases to occupy it; and
(4) the land assessment should be limited to the area on which the building sits and the area used by the dumpster.

The City argued the denial of the extent of the veteran's exemption was proper because:

- (1) the lessee has the use of two parking spaces somewhere behind the building;
- (2) there is a dumpster on the land used exclusively by the lessee; and
- (3) the minimum building site necessary for any change in use (requiring planning board approval) is 10,000 square feet, which should be the minimum area for assessment of the Property.

After a hearing on March 30, 2000, the board directed its review appraiser, Mr. Stephan Hamilton, to review the file, listen to the tape of the hearing, inspect and photograph the Property and file a report. The review appraiser's report is not an appraisal. The board reviews the report and treats the report as it would other evidence giving the weight it deserves. Thus, the board may accept or reject the review appraiser's recommendation. After the report was filed, both parties were given a copy of the report and allowed an appropriate period of time to comment on it. Neither party in this case commented. The board finds the report filed by Mr. Hamilton to be most compelling on the issues in this case.

Board's Rulings

Based on the evidence and testimony and the review appraiser's report, the board finds the appropriate assessment for the Property to be \$90,900.

In this case, the main focus of the arguments for both parties was the land area associated

with the restaurant building which is leased and, therefore, not eligible for the veteran's exemption. The board accepts the review appraiser's recommendation and the proper assessment is determined to be \$90,900, including a land assessment of \$53,800 and a building assessment of \$37,100, as calculated on page 5 of his report.

The board found that neither the City's assertion that the taxable area should be 10,000 square feet based on a minimum lot size nor the Taxpayer's assertion that the area should be the footprint of the building to be appropriate in this instance. Because the entire Property owned by the New Hampshire Veteran's Association consists of several other buildings, it is necessary to allocate an appropriate land area to the building involved in this appeal. In his report, the board's appraiser stated that an 8,000 square foot area would be appropriate to accommodate the building, the dumpsters, the walkways, access to the second story, some parking, and a sufficient area around the building to maintain the building. The board finds this estimate of size and its use to determine assessed value to be reasonable.

If the taxes have been paid, the amount paid on the value in excess of \$90,900 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 City has undergone a general reassessment, the City shall also refund any overpayment for 1999. Until the City undergoes a general reassessment, the City 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

Albert Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Buzz Gagne, Representative for New Hampshire Veterans Association, Taxpayer; and Chairman, Board of Assessors of Laconia.

Date: July 3, 2000

Lynn M. Wheeler, Clerk