Brian and Nancy Whitworth

v.

City of Rochester

Docket Nos.: 25735-10PT/26496-11PT

ORDER

The board has reviewed the "Taxpayers'" February 25, 2013 "Motion to reconsider" ("Motion") the February 19, 2013 Decision denying these appeals. The suspension Order issued on March 1, 2013 is hereby dissolved. The Motion is denied for the following reasons.

The Motion (p. 1) erroneously states the parties "stipulated to the Assessment." In actuality, the parties disagreed substantially on what the assessed value of the "Property" should have been in 2010 and 2011. The City Assessor did not accept the conclusion of the Taxpayers' appraiser (Vern J. Gardner, Jr.) that the assessment should be based on his estimated $375,000 real estate value, arguing instead that the $495,200 and $494,900 assessments on the Property in 2010 and 2011 were proportional and should not be abated. [The City Assessor noted the $585,000 total market value of the Property estimated by Mr. Gardner "is supportive of the assessments under appeal." (Decision, p. 2.)]

The law of New Hampshire applies to these appeals and therefore, whether or not "Maine and Vermont assess and tax car wash equipment as personal property" (Motion, p. 1) is not

relevant to the Decision. In any event, the Taxpayers did not present any specific evidence on how these other states (through their statutes, regulations and case law) treat car wash equipment and whether it is taxable as either real estate or personal property.

The Motion mentions "Clarebank" and "Weeks Dairy Foods," but these decision did not involve car wash properties or equipment substantially similar to that incorporated in a car wash. While the board considered their relevance during its deliberations, these decisions are not probative and the Taxpayers did not meet their burden of proving disproportionality by citing them. Unlike King Ridge v. Sutton, 115 N.H. 294 (1975), which is cited and applied in the Decision (pp. 5-6), both of those cases were decided by the board, not the supreme court.

The board disagrees with the argument in the Motion (p. 2) that the value of the "car wash equipment in the 'used market' is not at issue." It is transmissible value, not value in use, that is determinative of market value. To the extent the Taxpayers argued that the value of equipment in place should be deducted from the overall value of the Property, the value of that equipment if it was dismantled, sold and transported elsewhere is of relevance to the determination of the residual value of the real estate.

The Motion repeatedly mistakes the board's role: it does not function as an appraisal "Reviewer" of Mr. Gardner's work or his competence as an appraiser. Instead, the board made market value findings on the basis of the evidence presented by the Taxpayers, who had the burden of proof and relied on Mr. Gardner as their valuation expert. The board made adequate findings that his appraisal and testimony, the primary evidence presented, did not satisfy the Taxpayers' burden of proving the Property was disproportionally assessed. Therefore, the appeals were properly denied.

Pursuant to RSA 541:6, any appeal of the Decision must be by petition to the supreme court filed within thirty (30) days of the date on the board's denial, with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Albert F. Shamash, Esq., Member

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Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Walter H. Liff, PO Box 96, New Castle, NH 03854, representative for the Taxpayers; and City of Rochester, Assessing Department, 31 Wakefield Street, Rochester, NH 03867.

Date: March 25, 2013

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Anne M. Stelmach, Clerk