The Village of Loon Mountain
v.
Town of Lincoln

Docket No. 3708-87

DECISION

A hearing in this appeal was held, as scheduled, on September 8, 1989. The Taxpayer was represented by Edward S. Keating, Partner; Gregory M. Sorg, Esq.; and Russell W. Thibeault, President, Applied Economic Research. The Town was represented by Mary E. Pinkham, Staff Appraiser, Appraisal Division, State of New Hampshire Department of Revenue Administration.

The Taxpayer appeals, pursuant to RSA 76:16-a, the assessment of $5,539,050 (land, $3,430,300; buildings, $2,108,750) placed on its real estate located on Route 112, for the 1987 tax year. The Taxpayer also owns another parcel of land which is assessed for $2,457,000 and is a land-only property. The appealed property consists of an approximate 20-acre-land-area site improved with 11 buildings, of which 10 are owned by the Taxpayer.

Neither party challenged the equalization ratio of 100 percent for the 1987 tax year for the Town of Lincoln.

The Taxpayer's main contention with the assessment was the value placed on the land portion of the appealed property. Mr. Keating explained that the property was a 600-unit development which was started in 1974 with time-share units sold in 1977. The Taxpayer stated the improvements and all of the

amenities were on 10 acres of the land area for the Village of Loon Mountain, which made the property fully developed in the opinion of the general partner. Mr. Keating explained the road from Route 112 served as an access for 564 town houses and that the restaurant and general-store amenity were open to the general public, while there was a restriction on the number of users of the club, which was operated for the condominium and time-share owners. Mr. Keating also explained that the amenity recreation facilities were a necessary component for the time-share operation, while in juxtaposition the time-share owners were required to purchase memberships in the recreational facilities.

Mr. Thibeault testified for the Taxpayer that he focussed primarily on the assessment methodology which, in his opinion, resulted in overassessment. Mr. Thibeault also observed he did not find any sales at the $400,000-per-acre level. Mr. Thibeault stated he felt the roads were so encumbered that they had little value to the owners of the subject property and noted that the assessors did not make adjustments for this condition.

Mr. Thibeault also stated that the square-foot value for a condominium usually includes the amenities and represents an entire package. The appraiser questioned whether this might not be a condition of double taxation as it was his contention that land was being taxed to both the individual unit owners as well as the owner-developer of the project. Mr. Thibeault concluded the land component should be valued at $750,000.

The Town's representative stated that Lodge No. 6 was not on the property as of April 1, 1987. Miss Pinkham went on to explain that time-share units have a place in the marketplace very much like condominium units. The

question before the Board should be, did these taxpayers pay more than other condominium owners. Miss Pinkham stated that she measured the frontage and depth to estimate the acreage of the property and subtracted the area under the time-share units to determine the land area. Miss Pinkham stated the land perhaps should have had some adjustment on the west portion of the frontage to account for its lack of development potential. She also noted a sale of the Nordic Inn for $750,000 for 6.71 acres which was adjusted for time to a value of $304,000 an acre with the approvals in place. It was Miss Pinkham's contention that approvals added 50 percent and site work added 50 percent to raw land values for property such as the appealed property.

The Board finds the land value should be adjusted to reflect the time-share condominium sites and amenities with the proper assessed value of $2,665,700, plus a paving and concrete component of $26,000 and a building value of $2,108,750 for a total assessment of $4,800,450.

If the taxes have been paid, the amount paid on the value in excess of $4,800,450 on the appealed property is to be refunded with interest at the rate of six percent per annum from date of payment to date of refund.

SO ORDERED.

December 4, 1990

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within Decision have been mailed this date, postage prepaid, to The Village of Loon Mountain, the Taxpayer, to the Chairman, Board of Selectmen, Town of Lincoln, and to Richard Young, Director, DRA.

December 4, 1990

Michele E. LeBrun, Clerk

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The Village of Loon Mountain
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Docket No. 3708-87

RESPONSE TO MOTION FOR LEAVE TO FILE LATE MOTION FOR REHEARING
AND MOTION FOR REHEARING

The Taxpayer filed a motion for leave to file later motion for rehearing and stated in that motion that counsel for the Taxpayer changed employment in order to establish his own office and made arrangements for mail to be forwarded and address changes forwarded to correspondents. The Taxpayer's counsel's former employer failed to flag the board's Decision which was mailed to the former employer's office. The Board finds the Taxpayer, through no fault of his own, or his counsel was unable to file the motion for rehearing within 20 days. The board grants the motion for leave to file late motion for rehearing.

Motion for reconsideration or rehearing.

The board finds the Taxpayer in its motion for rehearing concerns itself with three issues which the Taxpayer feels warrant a rehearing. The first issue, that of the diminution in value of the land of the subject property to such an extent that it has little or no value is not documented by the evidence presented in the Taxpayer's assessment analysis (Taxpayer's exhibit 4). The Taxpayer's second assertion that the subject property is double taxed was presented by the Taxpayer at the hearing in the form of an

assessment analysis and not an appraisal of actual market conditions. The third contention of the Taxpayer in its motion for rehearing was that the board relied on the sale of the land occupied by the Nordic Inn. The board's Decision of December 4, 1990, acknowledged the Town's presentation of that sale as an indicator of value but did not rely on that sale as stated by the Taxpayer in its motion for rehearing.

The Board must consider in its judgment the whole of a taxpayer's estate and in the instant case the Taxpayer presented evidence on the value of one of the components, i.e., the land. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979); See also Marshall Valuation Service, Section 1, Page 3, March (1989). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975).

The board must in this case make an informed judgment of the speed of the property on the real estate freight train just at the time the brakes are being applied, not at its earlier accelerating rate nor at its full braking rate.

The board finds the Taxpayer in its motion for a rehearing fails to present any evidence which was not available at the time of the hearing. The board therefore rules motion for rehearing denied.

SO ORDERED.

February 21, 1991

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within Order have been mailed this date, postage prepaid, to Gregory M. Sorg, Esq., Counsel to the Taxpayer, to the Chairman, Board of Selectmen, Town of Lincoln, and to Richard Young, DRA.

Michele E. LeBrun, Clerk

February 21, 1991

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