Peter J. Regan and Julie R. Regan
v.
Town of Meredith

Docket No. 6329-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of $219,700 (land, $191,700; buildings, $28,000) on a camp on a 9,500 square foot lot located on Pinnacle Park Road (the Property). The Taxpayers failed to appear, but consistent with our Rule, TAX 102.03(g), the Taxpayers were not defaulted. This decision is based on the evidence presented to the board. For the reasons stated below, the appeal for abatement is granted.

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 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

The Taxpayers argued in their written submission that the assessment was excessive because:

1) the Property is overvalued and overassessed; and

2) comparables indicate a value of $220,000 and given an equalization rate of 77 percent, the assessed value should not exceed $169,400.

The Town submitted photographs of the Property and comparable assessment cards and argued:

1) the Property next to the subject property is owned by the Town but is not a town beach;

2) the land value has been reduced by 5 percent because of the abutting Town property and also due to the large boulders on the Property;

3) a reduction was made to the building due to open ceilings; and

4) the Town's recommended revised assessment of $214,800 (land, $187,900; buildings, $26,900) is fair and equitable.

The board's inspector inspected the property, reviewed the property tax card, and filed a report with the board. This report concluded the proper assessment should be $215,550 (land $191,700; buildings $23,850).

Based on the evidence we find the correct assessment should be $214,800 (land, $187,900 and building $26,900).

If the taxes have been paid, the amount paid on the value in excess of $214,800 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Peter J. & Julie R. Regan, taxpayers; and the Chairman, Selectmen of Meredith.

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Melanie J. Ekstrom, Deputy Clerk

Date: March 27, 1992

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Peter J. and Julie R. Regan

v.

Town of Meredith

Docket No.: 6329-89

REHEARING DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of $219,700 (land, $191,700; buildings, $28,000) on a camp on a 9,500 square foot lot located on Pinnacle Park Road (the Property). This is a rehearing of the appeal originally heard on February 19, 1992. The Taxpayers failed to appear, but consistent with our Rule, TAX 102.03(g), the Taxpayers were not defaulted. This decision is based on the evidence presented to the board.

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 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

The Taxpayers argued in their written submissions that the assessment was excessive because:

(1) the Property is overvalued and overassessed;

(2) comparables indicate a value of $220,000 and given an equalization rate of 77 percent, the assessed value should not exceed $169,400; and

(3) in the request for rehearing, the Taxpayers submitted comparable listings which they stated would indicate a value of $160,000 to $175,000.

The Town argued the assessment was proper because:

(1) the property next to the subject Property is owned by the Town but is not a Town beach and has a chain link fence across the front with a walk in gate;

(2) the Town discounted the Property's land value due to the fact that it is next to the Town property and some people will still use it as a swimming area;

(3) a reduction was made to the building due to open ceilings;

(4) the Taxpayers notified the Town of comparable properties that they would be using at the hearing and the Town identified these properties to the board and showed why they were not comparable to the subject;

(5) the Taxpayers' Property is very desirable and the bottom of the lake is very sandy; and

(6) the Town feels the rehearing was a waste of the Town and the board's time and requests costs for time and expenses incurred.

Board's Rulings

The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985);

Appeal of Town of Sunapee, 126 N.H. at 217-18. The Taxpayers argued that based on comparables the indicated value of the Property was $220,000 and in the request for rehearing, argued the indicated value was between $160,000 and $175,000.

Based on the evidence, we find the assessment remains as previously ordered at $214,800 (land $187,900 and building $26,900). The board is authorized to award costs as in the superior court. RSA 71-B:9; TAX

201.05(c). Costs are awarded where an appeal was frivolously filed or maintained. We find the Taxpayers request for rehearing was frivolously filed and maintained. Therefore, pursuant to RSA 71-B:9, the Taxpayers are ordered to pay the Town $53.48 for costs incurred in prosecuting this frivolously maintained appeal. These costs cover expenses and witness fees for the hearing day. The Taxpayers shall pay the Town this $53.78 within 10 days of the clerk's date below, sending a copy of the payment letter to the board. If Taxpayers fail to so comply, the Town may file an enforcement motion with the board, and then the board may file an enforcement action in the Merrimack County Superior Court.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Peter J. and Julie R. Regan, Taxpayers; and Chairman, Selectmen of Meredith.

Dated: September 16, 1992 _____

Melanie J. Ekstrom, Deputy Clerk

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Peter J. and Julie Regan

v.

Town of Meredith

Docket No.: 6329-89

ORDER

This order relates to "Taxpayers'" request to withdraw the board's rehearing decision dated September 16, 1992, awarding costs to the "Town" in the amount of $53.78. The board rules:

"Request granted."

Taxpayers notified the board that "the failure to appear for said hearing was due to a death in my immediate family and your office was duly notified by phone a day prior to the scheduled appeal."

Although the board has no record of the Taxpayers phone call, there is a possibility that the call was not properly recorded and therefore, the board gives the benefit of the doubt to the Taxpayers.

The Town by letter dated October 14, 1992, indicated "we certainly will be happy to abide with any decision you wish to make regarding your order, Docket #6329-89."

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
George Twigg, III, Chairman

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Michele E. LeBrun, Member

I hereby certify a copy of the foregoing Order has been mailed this date, postage prepaid, to Peter J. and Julie R. Regan, Taxpayers; and Chairman, Selectmen of Meredith.

Dated: _____
Melanie J. Ekstrom Deputy Clerk