Marjorie E. Parker, et al.

v.

Town of Alton

Docket No.: 6413-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of $2,416,500 (land, $1,645,900; buildings, $770,600) on a 7-acre lot with a marina (the Property). 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). We find the Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the bridge under which all boats access the marina has only four to five feet of clearance, making it difficult to get boats in and out of the basin especially in the spring;

(2) the Town's adjustment of -15% for the bridge was inadequate and a 40% adjustment would be more reasonable due to the limitation on the size of the

boats that can get to the marina;

(3) 650 feet of the 1525 feet frontage on Alton Bay is swamp and cannot be utilized;

(4) the Town's adjustment of $203,700 for the swamp land still does not adequately recognize the swamp land;

(5) two insurance companies valued the buildings at approximately $230,000 less than the Town's assessment for the buildings;

(6) adjustments for the swamp land and the buildings would result in a proper assessment of $1,500,000 to $1,700,000;

(7) Lakeport Landing marina in Laconia has a similar bridge clearance problem, similar docking and storage facilities and yet it was assessed for only $1,691,500 in 1988;

(8) River Lake West, a marina across Merrymeeting River, has attempted to sell slips but has not been able to because there is no market; and

(9) the Property's highest and best use is its current use as a rental marina with marina services.

The Town argued the assessment was proper because:

(1) the highest and best use of the Property is not its present use but rather to reconfigure the rights of the Property so the slips would be separately owned and the balance of the rights retained with the marina portion of the Property;

(2) a comparable marina, Sawmill Marina in Wolfeboro, with similar clearance access problems had sold 11 of its slips in 1988 and 1989; the Taxpayers slips would be worth approximately 10% less due to their relative location;

(3) an estimate by the direct market approach of the Property's market value, recognizing its slip, storage and marina components, was $4,666,800;

(4) an estimate of value by the income approach indicated a market value of

$3,478,900; and

(5) insurance replacement costs do not include all the costs that are transferred when a property is sold.

Board's Rulings

Based on the evidence, we find the correct assessment should be $2,257,900 (land $1,645,900 and buildings $612,090). This assessment is ordered because:

1) some of the buildings were overassessed;

2) the Taxpayer failed to present any market data to support a reduction in the land assessment; and

3) we reject the Town's conclusion of the Property's highest and best use.

The board reviewed the building assessments by: 1) examining the insurance estimates, cognizant that the insurance estimates did not include all value; and 2) using the Marshall Valuation Service (hereinafter "Marshall"). We also looked at the property-record cards to ascertain how the values were calculated. Based on this review, we have lowered the assessments on some of the building because the assessments were clearly excessive. The buildings listed below were assessed excessively.

Side Storage Assessment $69,600 Ordered Assessment $48,800

The side storage is designated as building 3 on the card and building E by the Taxpayers. The board looked at the photographs and other data and concluded the assessment was excessive. The insurance estimates were $33,500 and $20,000. Using Marshall, we valued the building as low-cost, storage warehouse, or as good-quality, utility building, arriving at approximately $12/sf and then depreciated the value by -15%.

Shop Assessment $80,200 Ordered Assessment $53,550

The shop is designated as building 4 on the card and building C by the Taxpayers. The board looked at the photographs and other data and concluded the assessment was excessive. The insurance estimates were both about $42,000. Using Marshall, we valued the building as an average-quality, storage building and used approximately $25/sf and then depreciated the value by -10%.

Rack and Wood Assessment $100,300 Ordered Assessment $83,360

The rack is designated as building 5 on the card and building D by the Taxpayers. The board looked at the photographs and other data and concluded the assessment was excessive. The insurance estimates were $73,000 and $85,000. Using Marshall, we valued the canopy at approximately $7.50/sf and

the rest of the building at approximately $10/sf and then depreciated the value by -35%.

Large Storage Assessment $201,400 Ordered Assessment $91,600

The large storage is designated as building 6 on the card and building F by the Taxpayers. The board looked at the photographs and other data and concluded the assessment was excessive. The insurance estimates were $83,400 and $86,300. Using Marshall, we valued the building as low-cost, storage warehouse, or as good-quality, utility building, arriving at approximately $12.25/sf and then depreciated the value by -30%.

The remaining improvements, the office (Town #1 and Taxpayer A), the battery shop (Town #2 and Taxpayer B), paving, shed, canopy and dock are found to be reasonably assessed.

Land Assessment

The Taxpayers did not present any credible evidence to show the land was overassessed. To carry their burden, the Taxpayers should have made a showing of the land's fair market value. This value would then have been compared to the land 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. Additionally, the Town made adjustments to the assessment to reflect the problems the Taxpayers raised.

Highest and Best Use

The Town's appraisal in defense of the assessment was based on the conclusion that Property's highest and best use would be to sell slips to individual while retaining the marina operations. We reject this conclusion, finding it too speculative during 1989, and given the low bridge height. Additionally, the Taxpayers, who run a marina and are familiar with the marina and boat-slip business, testified the Property's current use was its highest and best use. We agree. The assessment, however, was based on the assumption that the highest and best use was it's current use. Therefore, the Town's assessment is found to be proper with the building adjustments listed above.

Refund

If the taxes have been paid, the amount paid on the value in excess of $2,257,900 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Marjorie E. Parker, Taxpayers; and Chairman, Selectmen of Alton.

Dated: January 21, 1993

Valerie B. Lanigan, Clerk