

White Shutter Lodge Association, Inc.

v.

Town of Sunapee

Docket No. 7897-89

ORDER

This order relates to two general issues:

1) Does White Shutter Lodge Association, Inc., (the "Taxpayer") have standing as a "person aggrieved" to appeal the fact that it was not taxed in 1989 for property it owns?

2) Does the Taxpayer own property distinct from the property of its 16 shareholders and, if so, was the value of that property improperly assessed by the Town to the 16 shareholders' properties?

In summary, the Taxpayer's position was that:

1) it has standing to appeal as it owns property and had been separately assessed for it in prior tax years;

2) the Taxpayer, being a corporation owning distinct property, is not the same legal entity as a condominium association, nor should it be assessed the same; and

3) the \$50,000 amenity assessment with the 16 individual lots is the portion of the individual assessments that should be assessed to the Taxpayer; however, the implied cumulative assessed valuation of \$800,000 is well in excess of the property's value.

The Town, in summary, argued that the legal structure of the Taxpayer and the 16 individual owners was a de facto condominium form of ownership and that there was no, or only minuscule, value in the Taxpayer's property.

The Board finds, and rules, as follows:

As to the first issue, the Board rules the Taxpayer has standing to appeal its "non" taxation for the 1989 tax year. While this is indeed a unique request rarely brought before this Board, the Board has broad authority to remedy the inequities of improper taxation under RSA 71-B:11 and RSA 71-B:16 II. (See Appeal of Wood Flour Inc., 121 N.H. 991 (1981)). The Taxpayer has essentially appealed from the inaction by the Selectmen (as perceived by the Taxpayer) to correct improper assessments per RSA 76:14. Therefore, the Taxpayer is a person aggrieved in a general sense.

However, as addressed in an earlier order of January 31, 1991, the only party having standing in this appeal is White Shutter Lodge Associates, Inc., not any of the 16 individual lot owners, who would have to file separately. Nonetheless, the issue of this Taxpayer's proper assessment is so intertwined with the methodology employed by the Town in the assessment of the 16 individual owners that some review and analysis of those assessments is appropriate.

As to the second issue, both parties stipulated at the hearing that the Taxpayer does own a parcel of land distinct from the 16 individual shareholders.

The Taxpayer's property consists of approximately 1.25 acres fronting on Lake Sunapee, improved with roads, a boathouse, docks, water lines, and septic systems. The property is encumbered by the rights of the 16 individual lot

owners to access the lake and use the improvements as described in the deeds and the protective covenants. The actions of the Taxpayer and the utility of the property are further defined in the Taxpayer's bylaws and article of agreement.

Has any of this property's value, distinct as it is, been assessed improperly to the 16 individual owners? We don't believe so. The Town clearly testified that the assessments of the 16 individual owners were derived directly from sales in the market. Sales of those properties and other similar properties were analyzed. The building value was extracted from the sales value by the cost approach and the residual value was correlated and allocated between a site value (which varied depending on location and view) and a constant "amenities value." This "amenities value" reflects the individual owner's property right to use and enjoy the Taxpayer's property. This "amenities value" is a transferable property right of the 16 individual owners as shown by being derived directly from the sales of their property and it reflects a value that has accrued to the individual lots by their rights and association with the Taxpayer's property. In so ruling, the Board is not determining whether or not the \$50,000 is the proper value for the "amenities value," only that the methodology employed by the Town is reasonable and that such a value is properly assessed to the 16 individual owners and not the Taxpayer.

Relating to this "amenity value," a secondary concern was raised during the hearing as to whether any of the sales prices of the individually owned parcels included a value for the stock the shareholder (owner) has in the Taxpayer's property. No, it does not. The deeds make no mention of any

transfer of stocks. Further, the bylaws of the Taxpayer (Article IV) indicate that when a holder of a share transfers its property, the share becomes void and the new owner must be issued a new certificate of a share. Therefore, technically, no share exists during the transfer of title.

Lastly, is there any value remaining to the Taxpayer's property that has not accrued to the enhancement of the individual lots? We do not believe so.

While on the face of it the Taxpayer has separate title to the property and the right to convey title or interest in its property, such rights have been so overshadowed by the deeded rights, the protective covenants, bylaws, article of agreements, and the police powers of the Town and State that not even a ghostly vestige remains of its original form and value. No plausible additional use or value for this property was presented at hearing beyond its present highest and best use of enhancing the 16 individual lots that enjoy its use and whose owners control its destiny.

Therefore, the Board rules the Town was reasonable and correct in assessing no tax to this property for 1989.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin

Michele E. LeBrun

I certify that copies of the within order have been mailed this date, postage prepaid, to Max Shirmer, President, representing the Taxpayer, to Peter Wenger, Esq., counsel to the Taxpayer, and to the Chairman, Board of Selectmen, Town of Sunapee.

Melanie J. Ekstrom, Deputy Clerk