Gordon and Valerie Tibbits

v.

Town of Middleton

Docket No.: 10180-90PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of $19,450 on a vacant lot (the Property). The Taxpayers also own, but did not appeal, another vacant lot in the Town assessed at $7,750. 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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried their burden.

The Taxpayers argued the assessment was excessive because:

(1) an October 1991 appraisal estimated a $9,000 value;

(2) the Property was bought in 1987 for $10,900, which was the height of the real estate market;

(3) the assessment should be no more than what they paid for it;

(4) it was higher than the land value of a developed lot;

(5) the nonappealed lot was properly assessed due to wetlands, proximity to cemeteries, and right of way across that lot to one of the cemeteries; and

(6) the Town's comparables were far superior to the Property, especially in location and road access.

The Town argued the assessment was proper because:

(1) the assessment was supported by sales and assessments on comparable lots;

(2) other sales near the assessment date supported the assessment;

(3) the Taxpayers' appraiser did not consider the January 1991 Smith sale that was in the same development as the Property;

(4) the Taxpayers' appraisal used comparables that were not similar to the Property, and the appraisal did not make adjustments to the comparable that lacked any water rights, and the appraisal used a bank sale without making any adjustment; and

(5) the Taxpayers' nonappealed property was underassessed (the assessment should have been approximately $15,150) and the board must consider the Taxpayers' entire estate to determine whether the total tax burden was disproportional.

Board's Rulings

Based on the evidence, we find the Property's correct assessment should be $14,000. The board also finds the Town did not submit adequate evidence to show the nonappealed lot was underassessed.

In deciding this appeal, the board reviewed the Town tax maps that were supplied with the revaluation petition. Specifically, we reviewed the location of the Property and the Town's sales. The two sales in this development--Blier and Smith--have superior locations compared to the Property. Those comparables are located

closer to the water and the beaches. Thus, some locational adjustment would be warranted.

While some evidence of value, we did not accept the Taxpayers' appraisal because: 1) it did not use the Smith sale, which was available; 2) the adjustments for the water influence and location were not adequately explained; and 3) it was not time adjusted to the April 1990 assessment date.

The board's $14,000 assessment is based on the board's review of the assessment, the sales, the appraisal and the tax maps. 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). 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); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

We weighed the evidence and based on our judgment and experience, we conclude the Property's assessment should be $14,000. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

If the taxes have been paid, the amount paid on the value in excess of $14,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board

rule TAX 203.05, the Town shall also refund any overpayment for 1991, 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

Again, while the Town questioned the assessment on the nonappealed property, the Town did not present sufficient evidence to show underassessment, especially in face of the Taxpayers' testimony about the lot. A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Gordon and Valerie Tibbits, Taxpayers; Mary E. Pinkham-Langer, Agent for the Town of Middleton; and Chairman, Selectmen of Middleton.

Dated: June 3, 1994

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Valerie B. Lanigan, Clerk