Thomas E. Kearney, Jr.

v.

Town of Jefferson

Docket No.: 10548-90

DECISION

The "Taxpayer" appeals pursuant to RSA 76:16-a, the "Town's" 1990 assessment of $5,400 on Map 12, Lot 7, a 10-acre, vacant lot (the Property). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer failed to carry this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

1) the Property is landlocked by the B&M railroad and James River Woodlots and the only access is 1,800 feet down the railroad tracks;

2) a 1991 soil conservation survey confirmed the Property has severe wetness, drainage and soil problems;

3) the Property is unbuildable;

4) the wetness and lack of access makes any wood on the land useless;

5) a forester estimated a $50 per-acre land value, an abutter offered to purchase the lot for $60 per-acre, another buyer offered $500 for the lot, and a realtor estimated little or no value; and

6) the Town's comparables were not comparable because they had productive soils, hardwood trees, and road access.

The Town argued the assessment was proper because:

1) the assessment was based on comparable sales with adjustments for topography, location and access and was assessed as backland;

2) the 50% condition factor addressed the Property's problems;

3) the Property was assessed equitably with other lots in the Town; and

4) the Town acknowledged the subject lot is unbuildable.

The board's inspector reviewed the assessment-record card and filed a report with the board. This report concluded the assessment was proper and no adjustments were warranted.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove disproportionality. The 10-acre parcel has been assessed as unbuildable backland, with no access to roads, public or private. Highest and best use appears to be "supplemental land" to an abutter. The Taxpayer may wish to consider putting the land into current use as two out of three of his comparable properties were in 1990. One of the comparables was owned by Boise Cascade-Oxford Paper Co. (116 acres).

Differing square-foot assessment values are not necessarily probative evidence of inequitable or disproportionate assessment. The market generally indicates higher per-square-foot prices for smaller lots than for larger lots, and since the yardstick for determining equitable taxation is market value (see RSA 75:1), it is necessary for assessments on a per-square-foot basis to differ to reflect this market phenomenon.

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).

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
George Twigg, III, Chairman

_____
Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas E. Kearney, Jr., Taxpayer; and Chairman, Selectmen of Jefferson.

Dated: April 20, 1993

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Melanie J. Ekstrom, Deputy Clerk

Thomas E. Kearney, Jr.

v.

Town of Jefferson

Docket No.: 10548-90

ORDER

This order responds to the "Taxpayer's" April 29, 1993 reconsideration request, which is denied.

The board has tried to extrapolate all of the Taxpayer's arguments and to respond to them below. However, before reaching the Taxpayer's specific arguments, it is important to have a general discussion concerning the Taxpayer's burden of proof and his failure to meet the burden of proof.

The Taxpayer has the burden of showing the assessment was disproportionally high or unlawful, resulting in the Taxpayer 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). To meet his burden of proof the Taxpayer was required to do more than just raise issues -- he was required to provide market data to show how these issues affected the "Property's" value so as to show the assessment was disproportional.

The Taxpayer did not present any credible evidence of the Property's fair market value. The Taxpayer 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 Taxpayer submitted five letters from individuals concerning their opinion of the Property's value, but none of the letters, and none of the other evidence, consisted of market data that the board could review. The Town, on the other hand, supplied market data by providing the board with three sales of lots with access problems. Therefore, the board's main reason for denying the appeal was the lack of market data from the Taxpayer contrasted with the market data supplied by the Town.

The following numbered paragraphs will address the other arguments raised by the Taxpayer.

1) The board did not address Taxpayer issues five and six

Concerning argument five, this has generally been addressed above. The board found the arguments presented in number five were insufficient to carry the Taxpayer's burden. Additionally, the Town did not assess this land as prime land, but the Town valued it not only as supplemental land but as supplemental land without access, resulting in the $5,400 assessment. We also note the Taxpayer argued that the land has little or no value yet he has turned down offers to purchase the Property. If the land truly has little or no value, the Taxpayer should simply sell the Property. The Taxpayer's position -- that the Property has little or no value, but his retention of the Property -- raises doubts about the credibility of the Taxpayer's argument.

Concerning argument number six, the Taxpayer did not submit sufficient information to show that the Town's comparables were not comparable. Conclusory statements from the Taxpayer are insufficient for the board to review and then to determine whether the Taxpayer's or the Town's

position on the comparables was correct. Because the burden is with the Taxpayer, the Taxpayer must provide the board with sufficient objective evidence from which a conclusion can be reached.

2) No comparables from Town

The Taxpayer argued the Town did not submit any comparables. This is not so; the Town submitted three comparables in its brief. To the extent the Taxpayer does not deem these properties to be comparable, we have discussed that issue above.

3) The Town's fifty-percent off factor was not correct

The Taxpayer argued the Town's reduction of the base supplemental land value by fifty percent was insufficient. However, as has been discussed throughout this order, the Taxpayer is required to present market data as to why the assessment and its calculation was erroneous. We find the Taxpayer did not submit sufficient evidence for us to conclude that the fifty-percent reduction factor was incorrect. If the Town had not made an adjustment for the problems raised by the Taxpayer, the board would have had concerns about the correctness of the Town's calculations. However, the Town presented its methodology and that methodology considered the problems with this Property.

4) What other lots are equally assessed

The Taxpayer asserted the assessment should have been lowered because the Town did not show how similar lots were assessed. This argument

is not accurate because the Town did include the assessment cards for the three comparable sales, and the Property and the comparables all had access problems. The assessment-record cards demonstrated that lots lacking access were assessed as supplemental land and then further reduced by fifty percent because of the access issue. The Town's evidence demonstrated that the Town used the same methodology in assessing other properties, which is some evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

To the extent the Taxpayer claims the Town did not assess other lots in a consistent manner, he should have presented evidence on this point. The Taxpayer, however, did not submit any evidence to show similar lots were dissimilarly assessed.

5) Wetlands issue and comparables

The Taxpayer asserted that the Property has wetlands, and thus the assessment should have been reduced to reflect these wetlands. Moreover, the Taxpayer claimed the Town did not submit any comparable lots that had similar wetlands problems. Again, we point out that it is the Taxpayer's burden to show the assessment was erroneous, and it is insufficient to simply raise problems with the Property without translating those problems into adjustments that should be made.

6) Calling the land supplemental land

The Taxpayer asserted the board erred in calling the Property supplemental land. The board finds no error in this determination. The board concluded the Property's highest and best use was as supplemental land because of all of the issues concerning access and wetlands. Again, while the Taxpayer may disagree with the board's terminology, he has not shown how the terminology or the determination of the Property's highest and best use has resulted in an incorrect assessment.

7) Conclusion

The board denies the rehearing request finding the Taxpayer failed to present any "good reason" for granting such request. See RSA 541:3. As stated above, the Taxpayer failed to carry his burden by failing to show how the Property was overassessed. It is interesting to note that while the Taxpayer raised several problems with the Property, he never even provided the board with his opinion of the Property's value or his opinion of what the correct assessment should be.

SO ORDERED.

THE BOARD OF TAX AND LAND APPEALS.

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George Twigg, III, Chairman

_____

Ignatius MacLellan,

Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Thomas E. Kearney, Jr., Taxpayer; and Chairman, Selectmen of Jefferson.

Dated: June 8, 1993

0008 Valerie B. Lanigan, Clerk