David and Barbara Rich

v.

Town of Alexandria

Docket No.: 10588-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 adjusted assessment of $129,000 on a one-acre lot and a 1/6 interest to Bourbon Beach on Newfound Lake (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. However, the board held a hearing on April 23, 1993 on the sixteen 1990 Alexandria appeals to receive evidence on the basis of the land valuation and the general assessment methodology employed by the Town. The board has reviewed the written submittals and issues the following decision. 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 the assessment was excessive because:

1) the Property was not assessed at the April 1, 1990, fair market value;

2) the Property was on the market in 1992 for $75,000 -- $54,000 less than the

assessed value;

3) the Property is woodland; and

4) the taxes increased $3,300 in one year's time.

The Town failed to submit any arguments to support the assessment and was finally defaulted. The property-record card indicates the Town made a rear-acre adjustment in 1990, resulting in the current assessment. The Town further reduced the assessment to $114,000 in 1992 "due to reanalysis."

At a hearing held by the board on April 23, 1993, the Town explained its general methodology used in assessing property on Newfound Lake.

The board's inspector reviewed the assessment-record card, reviewed the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the Town's 1992 adjusted assessment should also apply to tax year 1990 because it was corrected for map errors. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation. In this case, the board gives the report no weight.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be $113,550 because the 1992 adjustment (although improperly totaled to $112,500) made by the Town accounts for the lot being undeveloped, having shared water access and being located on the west side of West Shore Drive.

No further adjustment is warranted because:

1) The Taxpayers complained about the high amount of taxes they must pay. The

amount of property taxes paid by the Taxpayers were determined by two factors: A) the Property's assessment; and B) the municipality's budget. See gen., International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor i.e., the board will decide if the Property was overassessed, resulting in the Taxpayers paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. at 217. The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

2) The only evidence of market value submitted by the Taxpayers was that the Property was listed for $75,000 in 1992; that however is not credible evidence of the Property's fair market value in 1990. To carry this burden the Taxpayers should have made a showing of the Property's 1990 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.

3) The Taxpayers' listing in 1992 is evidence of a declining market. However, the Taxpayers needs to make a showing that the Property has changed in value to a greater extent than that indicated by the change in the general level of assessment in the Town as a whole to prove their property is

disproportionately assessed.

If the taxes have been paid, the amount paid on the value in excess of $113,550 shall be refunded with interest at six percent per annum from date

paid to refund date. RSA 76:17-a.

The Board must comment on the Town's appraisers' less than professional reassessment and maintenance of the assessment record cards. The board finds:

1) The appraisers' review and analysis of the sales relating to the Alexandria/Newfound Lake market was inadequate. It is clear from the evidence presented at the April 23, 1993 hearing that the appraisers never fully researched the limited number of sales that had occurred. Further, the sales survey submitted at the hearing does not include any verification of the sales used and there are no notations as to the basis of the adjustments made in analyzing the sales and deriving of base value used for waterfront property.

2) The Board found, in reviewing the files, that the appraisers' methodology was not always consistently applied either during the reassessment or in subsequent tax years (e.g., rear land base values were subsequently reduced on some but not all properties from $20,000 an acre to $2,000 an acre).

3) During the revaluation process, the appraisers decided to value properties fronting on Newfound Lake and divided by West Shore Rd. in one assessment rather than two. Existing cards for the waterfront portion remained in the Town's file with an assessment on them. Consequently, anyone reviewing the file would inherently be confused by the existence of this "dummy" assessment record card.

4) The notations and calculations of the land valuation on the assessment record cards are in many cases illegible, non-existent or so brief that it is difficult to understand the appraisers' reasoning.

Because of these shortcomings, the Board considered initiating the procedure under RSA 71:B-16 of ordering a reassessment of the properties in the Newfound Lake area. However, the Board concluded that, because of the limited area in concern, that equitable assessments could be more efficiently corrected through the abatement process.

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

_____
Paul B. Franklin, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to David and Barbara Rich, Taxpayers; and

Chairman, Selectmen of Alexandria.

Dated: July 9, 1993

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Melanie J. Ekstrom, Deputy Clerk

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ORDER AND COMPLIANCE HEARING NOTICE

On January 13, 1994, the Taxpayers filed a motion to enforce compliance with the board's decision of July 9, 1993, which ordered the abatement of the Taxpayers' assessment from $129,000 to $113,500.

The board's clerk, in a letter of January 27, 1994 to the Town, asked the Town to submit evidence of payment of the abatement. The Town responded through its tax collector on February 9, 1994, showing a single abatement of $199.05 applied as of December 31, 1993 to the outstanding 1993 taxes.

The board finds that the abatement calculation:

1) does not equate to the ordered abatement; and 2) does not address the subsequent tax years (1991, 1992 and 1993) as required by RSA 76:17-c and TAX 203.05.

Therefore, the board schedules a compliance hearing for Monday, March 28, 1994 at 1:00 p.m. A representative of the Town and the Taxpayers shall attend.

The Town shall provide the following documentation and information:

1) the net assessment for each tax year (1990-1993) on which the Taxpayers' final tax liability was calculated; and

2) the basis of any abatement made as the result of the board's July 9, 1993 decision.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to David and Barbara Rich, Taxpayers; and Chairman, Selectmen of Alexandria.

Dated: March 10, 1994

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Valerie B. Lanigan, Clerk