Joseph and Yvette Deshaies

v.

Town of Weare

Docket No.: 10859-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessments of: $92,900 (land $63,500; buildings $29,400) on Lot 32, an .18-acre lot with a camp; and $14,200 on Lot 33, a vacant, .21-acre lot (the Properties). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. After reviewing all Lake Horace appeals, the board decided to hold a hearing to gather further information. The board has reviewed the written submittals and the evidence from the hearing and issues the following decision. For the reasons stated below, the appeal for abatements is denied.

The Taxpayers have the burden of showing the assessments were 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 failed to carry this burden and prove disproportionality.

The Taxpayers argued the assessments were excessive because:

(1) the Properties are seasonal only, are on a road not maintained by the Town, and do not receive any Town services;

(2) the building has no interior finish, cellar, heating system, drinking water or showers, and the wiring is exposed;

(3) Lot 33 is nonconforming and is not buildable by today's standards;

(4) an April 1, 1990 appraisal estimated a $66,000 market value on Lot 32, and concluded Lot 33 was nonbuildable and nonconforming;

(5) the assessment increased $75,400 in one year's time;

(6) the Town's comparables are not comparable because three are brand new, year-round residences and far superior in quality to the Taxpayers' home; some of the comparable sales occurred before the downslide in market values; and one was not an arm's length transaction because it was sold completely furnished with financial concessions to the buyer; and

(7) the Taxpayers' comparables are comparable because the first sale did not include the two vacant lots at the time of the April, 1990 sale; the second sale was on the market for six months and reduced to $100,000, and a value adjustment was made to address the difference in lot size; and the last sale was most comparable to the Properties in size, utility and market appeal.

At the start of the hearings, the Town explained the assessment methodology that was applied to all Town properties and the detail of that methodology as applied to Lake Horace properties. The Town submitted a sales book with photographs and sales and assessment information. The Town argued the assessments were proper because:

(1) the Taxpayers' comparables are not comparable because one included two additional lots that were purchased to make a 1-acre waterfront lot; one included a house lot and a vacant, waterfront lot which was later improved with a year-round residence and sold in August, 1990 for $133,000; and one was not used as a benchmark sale to determine the values used in the revaluation;

(2) comparable properties sold in December, 1988 for $118,000; September, 1989 for $134,000; August, 1989 for $110,000; and May, 1990 for $135,000 -- all of which support the Properties' assessments;

(3) the same methodology was used throughout the Town; and

(4) the Properties were assessed as one estate but with two separate lots.

The board's inspector reviewed the assessment-record card and 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 assessments were proper. 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.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not carry their burden of proving disproportionality. The board finds that the Town used consistent methodology. The Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in

the Town. This testimony is evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

Further, the Town adequately rebutted the appraisal presented by the Taxpayers by stating that comparable sale number one was not a waterfront property as compared to the Taxpayers, comparable number two was a transfer of a partial lot and a three-way sale, and comparable number three was an atypically low sale as evidenced by the other lake sales the Town analyzed.

Lastly, the Town properly assessed the two lots separately but considered them as one estate. See RSA 75:9.

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

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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 Joseph and Yvette Deshaies, Taxpayers; and Chairman, Selectmen of Weare.

Dated: September 15, 1993

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Valerie B. Lanigan, Clerk