Joseph E. and Dorothy Bellush

v.

Town of Gilmanton

Docket No.: 10894-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of $200,700 on a vacant, 46-acre lot (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board reviewed the written submittals and, due to issues raised in the parties brief, the board held a hearing. 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 this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:
(1) the waterfrontage on the lot is very shallow and muddy and precludes access to the lot by boat;

(2) the land adjacent to the waterfront is all wetland, with the exception of one area north of Clough Brook, and makes access to the waterfront from the remaining acreage of the lot difficult, if not impossible;

(3) an appraisal by George Boley estimated the market value for the Property by the direct sales and development approaches at $115,000; and

(4) the value of the lot based on the Taxpayer's discussions with several realtors was between $75,000 and $125,000.

The Town argued the assessment was proper because:

(1) the condition factor of five and the resulting assessment is warranted because the frontage, while being mostly wet, does provide privacy for the lot;

(2) a review and analysis of the condition factors and resulting values of the adjoining properties indicates that the Taxpayer's Property is proportionally assessed;

(3) lots with 100' of frontage were enhanced with a factor of three, thus the Taxpayer's lot with a frontage of 1600', despite its wetness, was enhanced with a factor of five; and

(4) the sale used by Mr. Boley in his appraisal is vastly inferior to the subject Property and the adjustments made for its quality location and current use were not appropriate.

Board's Rulings

Based on the evidence, we find the correct assessment should be $156,700. This assessment is ordered because:

(1) all the evidence supports that only one feasible waterfront site is possible on this lot;

(2) the long distance between Mountain Road and the usable portion of the waterfront would necessitate a substantial expenditure in providing even a seasonal driveway access;

(3) the limited utility of the waterfront and the distance between the waterfront and the road is more properly recognized by a condition factor of three on the two-acre site; and

(4) the remaining land valuation for the acreage and the road frontage are reasonable based on the evidence of both the Town and the Taxpayer.

No further abatement is warranted for the following reasons.

(1) The size, privacy and waterfront access afforded by the lot was not adequately recognized by Mr. Boley's appraisal.

(2) Mr. Boley's appraisal discounted any waterfront influence for all but 100' of the frontage. While the board agrees there is very limited practical utility for most of the frontage, there is still some desirability for the waterfront area due to its privacy and buffering and wildlife aspects.

(3) The board agrees with the Town that the single sale relied upon by Mr. Boley's appraisal was not adequately adjusted for the differences in the Property and the location.

(4) The value of $156,700 results in the Property being proportionally assessed with those properties just north and south of it considering its uniqueness and limited potential for waterfront development.

If the taxes have been paid, the amount paid on the value in excess of $156,700 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.

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

_____

Paul B. Franklin, Member

_____

Michele E. LeBrun, Member

Bellush v. Town of Gilmanton

Docket No.: 10894-90PT

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph E. and Dorothy Bellush, Taxpayers; and Chairman, Selectmen of Gilmanton.

Dated: March 17, 1994

0008 Valerie B. Lanigan, Clerk