

Rockywold-Deephaven Camps, Inc.

v.

Town of Holderness

Docket Nos.: 8157-90 and 10940-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessments of \$14,647,200 (land \$12,422,900; buildings \$2,224,300) on a 91.90-acre lot with 79 camps (the Property). For the reasons stated, the appeal for abatements is granted.

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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved disproportionality.

Property Description

The Property under appeal is located in the Town of Holderness with 91.9 acres and approximately 8,000 feet of frontage on Squam Lake as shown on Map 10, Lot 10.

Improvements include 60 seasonal cabin cottages, two lodges, as well as housing for the Rockywold-Deephaven Camp, Inc. (RDC) staff. Other amenities include a playhouse, docks for boating, tennis courts and a ball field.

By stipulation, the Taxpayer does not claim any overassessment of land and buildings identified on Map 10-010, 10-013, 10-035, 10-039, and 10-041, nor does the Taxpayer believe these parcels are underassessed. They are, therefore, not under appeal or subject to any theory of offset.

The subject Property was used during the tax years under appeal as it has been used since 1916 when the Rockywold and Deephaven camps were merged as a seasonal summer camp for families.

Rockywold-Deephaven Camps, Inc. is a for-profit entity comprised of 260 stockholders who expressed an intent to continue its operations "in accordance with its historic tradition and consistent with environmental and other non-economic concerns."

While the Board of Tax and Land Appeals (BTLA) usually relies on the independent report of its review appraiser for properties which are unique in size, value, or usage, the BTLA took a comprehensive and extended view of the subject Property and several comparables on the second day of the two-day hearing.

The cottage accommodations could be accurately described as basic, rustic, and no frills with structures having approximately 1,000 square feet of living room and bedroom space. Since the feeding is communal (three meals per-day in a central dining hall ... seven days a week), no kitchen space has been provided in the design and construction of any cottages nor does there exist the potential to create a kitchen area within the existing footprint. To further dramatize the back to nature life style which is fundamental to the so-called improvements, each cottage had on its porch a vintage ice box to which was delivered each day a block of ice taken from Squam Lake

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the rental season.

While there is no similar facility in the area with the same acreage, number of buildings, "camper" capacity, substantial amenities, resident supervisory staff and repeat clientele, testimony by the Taxpayer's appraiser Russell W. Thibeault, Applied Economic Research, indicated that RDC rental rates were consistent and competitive with alternative lodging facilities in the region (approximately \$70 per-person, per-day (American plan), with an average, \$2,000 per-week cost per family).

There are three obvious scenarios by which the subject Property could be utilized: continued use as a seasonal, family-camp operation; conversion to a conventional lot subdivision; or conversion to seasonal condominium development.

The board concurs with the highest and best use as stipulated to by the Taxpayer's and the Town's appraisers...converting from 40 to 60 of the existing buildings to condominium units.

The Taxpayer's Presentation

The Taxpayer's appraisal was based on a derivative of the income approach, a variation referred to as the development-cost approach to value. Under this approach, an anticipated project's revenues are estimated, costs (including overhead and profit) are deducted and a present value is then estimated for the residual income flow. This approach to value essentially takes the perspective of a developer to a site's future ability to generate income from sales. In this case, the income would be derived from selling a total of 40 condominium units on the site. In the case of the subject Property, the development cost approach to value was supplemented with a view of the direct, sales-comparison approach. The direct, sales-comparison approach considered the

undeveloped pieces of land. The value estimate derived from this approach was then reconciled with the value estimate derived under the development cost approach. A search for comparable sales revealed no sales with a comparable mix of improvements and raw land. These raw-land sales, however, do provide some indication of the value of the subject, inasmuch as most of its value is believed to consist of raw land.

Mr. Thibeault's appraisal concluded that the market, during the tax years under appeal, would have paid \$400,000 per-unit with a 2-year, sell-off period required and that the market value of the 40 units would have been \$8,400,000 after calculating and deducting a developer's profit, discount rates, and a contingency factor.

Mr. Thibeault considered such limiting factors as septic design, soil/ledge conditions, local zoning requirements, and a land-use analysis by a registered engineer who previously served on the Holderness Planning Board. Mr. Thibeault came to the conclusion that the maximum allowable density would probably be 40 units. This figure was supported by an earlier independent study by local realtor/appraiser John Armstrong (Armstrong Appraisal Associates).

The Town's Presentation

Mr. Gary Roberge, Avitar Associates of New England (owner of software licensed for use by Apple Appraisal, the Town's revaluation company), testified that he reviewed the Property in 1991 for the purpose of estimating the market value of RDC. He postulated the development of a 70-unit condominium conversion. The most likely unit value, including amenities, was \$425,000 per-unit. His rough estimate was \$18,000,000, refined to \$14,500,000 based on a scaled down 60 units.

The Town's appraiser, Apple Associates, argued the assessments were proper because in all probability 60 units would be converted to condominium ownership. "An owner/developer could apply for 60 units and the Town could not prohibit it." The probable price paid for each unit would be \$425,000, with a 3-year, sell-off period required.

The Town's estimated 3-year, sell-off period contemplates the sale of 20 units per-year at \$425,000 per-unit with a 10% developer's profit.

Mr. Bernard Smith, Apple Appraisal, took the position that the Property was a "60-unit cottage colony with the right of individual or condominium ownership."

With respect to marketing the units in a relatively short period of time, the Town felt that those families who have rented units over the years would constitute a readily available list of prospective buyers which could accelerate the time schedule for marketing the Property.

The Town further argued that a developer could create a 60-unit condominium conversion without being required to deal with the effect of the local zoning ordinance governing condominium conversions of existing developed property.

Board's Rulings

The BTLA rules that the Taxpayer's have met the burden of proof and have shown the Property was overassessed during the 1990 and 1991 tax years.

Based on the evidence, we find the correct assessment should be \$8,500,000 (\$8,400,000 x 1.01 equalized ratio rounded). In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted.

See Appeal of Town of Sunapee, 126 N.H. 214, 217 Page 6
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(1985). However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.)

The parties agreed on several areas:

1) its current use was not the highest and best use; rather highest and best use was conversion of existing buildings to condominiums;

2) the best approach to value was the development-cost approach; and

3) the equalization ratios were 1990--1.01, 1991--1.05, and 1992--1.20.

The parties disagreed on the following areas:

1) the value of the condominium units (Taxpayer--\$400,000; Town--\$425,000);

2) the total number of units (Taxpayer--40 units; Town--60 units);

3) the sell-off period (Taxpayer--2 years; Town--3 years); and

4) the effect of zoning (Taxpayer--conversion would require compliance; Town--conversion would be grandfathered).

The board finds the Taxpayer's selection of a development-cost approach to value to be realistic and appropriate given the facts of this matter. Therefore, we base the assessment on Mr. Thibeault's report times 1.01, the equalization ratio, resulting in an \$8,500,000 assessment.

The board finds the Taxpayer's estimate of a \$400,000 per-unit selling price appears to be optimistic and at the upper end of the range based on comparable sales presented to the BTLA given the observed low-end quality of the cottage construction as well as the formidable problem of functional obsolescence caused by the lack of space for kitchen facilities in all of the cottages.

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The BTLA has serious reservations concerning the Town's estimate of a 60-unit conversion considering the testimony regarding soil, ledge, and septic-system capacity.

The density created by a 60-unit development would give rise to serious impact on the lack of privacy, crowding, and would in all likelihood diminish the chances of obtaining \$425,000 for nonwaterfront units in the market place.

The suggestion by the Town's appraiser "that the rich tradition of RDC must be captured and preserved in any marketing vision" seems contrary and inconsistent with the premise that 60 units could be converted to independent- living condominium units.

The suggestion by the Town that the possibility exists for conversion of the RDC cottages to condominium ownership based on a continuation of the present, communal-dining facilities (absent individual kitchens in each unit) without severely impacting the market value was not even remotely supported by market data.

The BTLA rejects the Town's conclusion that the Taxpayers can convert original cottage units to condominium ownership without having to satisfy existing provisions in the Town's zoning ordinances.

On the issue of Town approval for condominium conversion, we find approval would be required. Page 14 of the Town's subdivision ordinance states:
Conversions to Condominiums or Time Sharing Units

Whenever any existing developed property is proposed for conversion to condominium or time sharing ownership and before any building permit is issued for the alteration of such building, the owner or his agent shall apply for and secure approval of such proposed subdivision from the Planning Board.

Based on the above ordinance, the Property owner would be required to obtain subdivision approval. Moreover, conversion from a single ownership of all realty rights to multi-ownership of some rights (condominium common property) and individual ownership of other rights (individual cabins) certainly is a subdivision under RSA 672:14 (supp. 1992).

The case upon which the Town relies, Seabrook v. TRA-SEA Corp., 119 N.H. 937 (1979), concerns whether certain subdivided lots which had been recorded prior to the enactment of the Town's zoning ordinance and subdivision regulations were "grandfathered" and thus, exempt from the requirements of said zoning ordinance and subdivision regulations.

Seabrook v. TRA-SEA Corp., Id., is inapposite to the present case because in that case there was already a recorded subdivision plan and the subdivision ordinance specifically grandfathered lots shown on previously recorded plans. Here, the ordinance is different and specifically requires subdivision approval. There is no recorded plan depicting the condominium or the various rights contained therein.

The board finds the Taxpayer's requests for findings and rulings as follows:

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Neither granted nor denied.
6. Granted.
7. Granted.
8. Granted.
9. Granted.
10. Granted.
11. Granted.
12. Granted.
13. Granted.

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14. Granted.
15. Granted.

16. Granted.
17. Granted.
18. Granted.
19. Granted.
20. Granted.
21. Granted.
22. Granted.
23. Granted.
24. Granted.
25. Granted.
26. Granted.
27. Granted.
28. Granted.
29. Granted.
30. Granted.
31. Granted.
32. Granted.
33. Granted.
34. Granted.
35. Granted.
36. Granted.
37. Granted.
38. Granted.
39. Granted.
40. Granted.
41. Granted.
42. Granted.
43. Granted.

If the taxes have been paid, the amount paid on the value in excess of \$8,500,000 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.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the Page 10 Rockywold/Deephaven v. Town of Holderness Docket Nos.: 8157-90 and 10940-91PT

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

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Margaret H. Nelson, Esq., representing Taxpayer, Rockywold-Deephaven Camps, Inc.; and Chairman, Selectmen of Holderness.

Dated: March 11, 1994

Valerie B. Lanigan, Clerk

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ORDER

This order relates to the Town's motion for rehearing in the above-captioned matter dated March 30, 1994.

The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3.

If the Town feels the subject property changed in value at a rate different from the value as a whole of other property in the Town, then it may make whatever good-faith adjustments it deems appropriate for the tax years 1992 and 1993. (See BTLA Administrative Rule TAX 203.05).

Motion denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Margaret H. Nelson, Esq., Attorney for Rockywold-Deephaven Camps, Inc., Taxpayer; and Chairman, Selectmen of Holderness.

Dated: April 6, 1994

Valerie B. Lanigan, Clerk