Thomas W. and Patricia M. Barry

v.

Town of Salisbury

Docket No.: 8482-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of $60,550 on a vacant, 78-acre lot (the Property). For the reasons stated below, the appeal for abatement is denied.

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 failed to carry their burden.

The Taxpayers argued the assessment was excessive because:

(1) the land is not readily accessible and primarily usable as timber land;

(2) in 1986 an abutting larger lot was offered for $44,000 or $270/acre; and

(3) the assessment should be $20,000.

The Town argued the assessment was proper because:

(1) it was calculated during the town-wide revaluation and was based on sales that occurred near the revaluation date;

(2) if the Property was on a town-maintained road, it would have also been assessed for such road frontage;

(3) certain sales supported the assessment; and

(4) the Town reviewed the assessment during the revaluation.

The Town also asked the board to order the Taxpayers to pay the Town's appeal costs because the appeal was frivolous, being based on increased taxes and not market data.

Board's Rulings

We find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

The Taxpayers did not present any credible evidence of the Property's fair market value. The 1986 offering for the abutting land was insufficient because: 1) it was too remote in time to the 1990 assessment; and 2) there was insufficient information about how that land compared to the Property and what adjustments would be needed to equate the offered land to the Property.

To carry their burden, the Taxpayers 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.

Finally, 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).

We deny the Town's request for costs, finding that while the Taxpayers did not have sufficient evidence, their appeal was not abuse of the appeals process.

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

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George Twigg, III, Chairman

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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 Thomas W. and Patricia M. Barry, Taxpayers; and Chairman, Selectmen of Salisbury.

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Dated: May 18, 1994

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Valerie B. Lanigan, Clerk