David B. Campbell, et al

v.

Town of Danbury

Docket Nos.: 9248-90 and 12781-92 PT

DECISION

The "Taxpayers'" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessment of $165,289 (land $51,108; buildings $114,181) on an 11.03-acre lot with a main house, a shower house, and five cabins (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 meet their burden to show the total assessment was unfair, unequal or disproportionate.

The Taxpayers argued the assessment was excessive because:

(1) the buildings are assessed far in excess of their value due to their poor condition and have little or no salvage value;

(2) the buildings have a negative value due to the cost of demolition;

(3) the buildings are not insurable;

(4) the Taxpayers purchased the Property in April 1988 for $350,000, and has received two different subdivision approvals. The Property was listed for sale for $379,000 in 1991 and received no offers; and

(5) FDIC has appraised the Property in a range of $75,000 to $90,000, but the appraisal is not available for the board's review and consideration.

The Town argued the assessment was proper because:

(1) both lots (lot 44 - not appealed- and 47) need to be viewed as one estate to determine if the Taxpayers are proportionately assessed;

(2) the seven lot subdivision approval is still valid having four years from its approval for construction to take place;

(3) there is currently a "purchase and sales" agreement with a camp for $220,000 subject to financing;

(4) the buildings are not so deteriorated as to have no value; the cottages and boat house are not in as bad condition as the main recreation hall and the replacement cost was adjusted to reflect the condition;

(5) this Property is the only parcel on School Pond (64 acres) with improvements; and

(6) the purchase price in 1988, the asking prices under the two subdivision concepts and the pending purchase and sales agreement indicate the Property has not been overassessed.

Board's Rulings

1992

The Taxpayer's appeal is based on the Constitution of New Hampshire,

Part 2, Article 5, which states in part:

And further, full power and authority are hereby given and granted to the said general court, from time to time, . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state; and upon all estates within the same . . . .

and RSA 75:1 (supp.) which states:

Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the assessed value of all other taxable estate bears to its true value. Boston & Maine R. R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450." Bemis v. Claremont, 98 N.H. 446, 452 (1954).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H. 187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

Based on the evidence, we find the correct total assessment should be $165,289 (land $165,289; buildings $-0-). This assessment is ordered because the board agrees with the Taxpayers to the extent that the buildings have no contributory value and may even represent a negative impact on value owing to the case of demolition.

The highest and best use of the Property has changed from a camp or institutional use to a "clustered", seven lot subdivision with no value

attributable to its buildings as previously assessed.

The Board recognizes that the case at bar presents a difficult assessing problem in trying to determine what is the proper assessment of a property in transition with obsolete buildings with little or no contributory value on land where the highest and best use has changed significantly due to the acquired permits and changing market.

The Taxpayers would have the Board believe that their land and building assessments can and should be viewed separately and distinctly in determining proportional assessment. They argue that, "since there is no evidence that the building had any transmissible value in 1990-92, the proper taxation should be based upon land valuation of $75-90,000."

The Board rules that the total land and building assessment is what must be focused on to determine whether the Taxpayers are disproportionately assessed or not. The Courts have held that all portions of a taxpayer's property must be considered in determining their fair share of the common burden.

. . ."the fact that some classes of their estate were appraised too high would not entitle them to an abatement if the error were neutralized by an undervaluation of other estate. Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant.' Edes v. Boardman, 58 N.H. 580, 588, overruling Dewey v. Stratford, 42 N.H. 282, 289." Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200

For the Board to reduce the Taxpayers' assessment would be analogous to a weights and measure inspector sawing off the yard stick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick.

The Courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, -not just comparison to a few other similar properties. "Justice requires that it (the whole property) should be appraised for taxation at the same ratio to its true value as the assessed value of all the other taxable estate bears to its true value. The ground upon which an abatement is granted is the reduction of the

plaintiffs assessment to their share of the tax.

The Board finds that the land assessment of the Taxpayers' property is undervalued and that it is the apparent overassessment of the building components that bring the total assessment near to their proper share of the tax burden.

The evidence of the purchase price in 1988, ($350,000), the resale asking price in 1991 for $379,000 and the purchase and sale agreement (not consummated for financing reasons related to the purchaser, rather than the real estate value.) for $220,000 in 1992 support the total 1990 and 1992 assessed value of $165,289.

The Taxpayers submitted a value opinion based on an FDIC appraisal they neither had seen nor could produce. The Taxpayers asked the board to base its decision on the value opinion. The board, however, was unable to rely upon the figure alone because the Taxpayers did not include the basis for the value conclusion. Specifically, since the appraisal was not available, the board was unable to determine what sales were used or what adjustments were made to the sales to arrive at the value conclusion. Without such information, the board and the municipality are unable to review the soundness of the value conclusions.

The Town must annually review its assessments and adjust those that have declined or increased more in value than values generally changed in the Town. RSA 75:8 states:

> The assessors and selectmen shall, in the month of April in each year, examine all the real estate in their respective cities and towns, shall reappraise all such real estate as has changed in value, and shall correct all errors that they find in the then existing appraisal the year next preceding ***.

See also, 73:1, 73:10, 74:1, 75:1. As stated in Appeal of Net Realty Holding Trust, 128 N.H. 795, 799 (1986), a fair and proportionate tax can only be achieved through a constant process of correction and adjustment of assessments. In yearly arriving at an assessment, the Town must look at all

relevant factors such as changing highest and best use. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

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

The Board therefore rules the Taxpayers have failed to prove that the assessment is unfair, improper, or inequitable or that it represents a tax in excess of the Taxpayers' just share of the common tax burden. The ruling is, therefore: Request for abatement denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas J. Pappas, Agent for David B. Campbell, et al, Taxpayer; and Chairman, Selectmen of Danbury.

Dated: December 1, 1993

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Valerie B. Lanigan, Clerk