John A. Nikander

v.

Town of Holderness

Docket No.: 9545-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 abated assessment of $245,100 (land, $210,000; building, $35,100) on Lot 22, a .45-acre lot with a cottage (the Property). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is denied.

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 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

1) the Property was purchased in August, 1990 for $170,000;

2) the cottage's support system was sagging and $4,000 to $5,000 was expended

for repairs;

3) the Property is limited to seasonal use because the cottage has no heat and the lot cannot support a septic system;

4) the rear portion of the lot is mostly a shared approach road;

5) the lot is quite small and substandard by today's zoning requirements; and

6) a September 3, 1989 appraisal estimated the Property's value at $185,000.

The Town argued the assessment was proper because:

1) Taxpayer's comparables are not comparable because two were auction sales, one is a condominium unit, and the last was in another town and on a different lake;

2) the appraisal was done for an estate settlement and thus does not show market value;

3) the Taxpayer's purchase price was not an arms length transaction since the Taxpayer rented the Property for years before purchasing it and the sale was not a market sale because the Taxpayer bought it from an estate and not on the "open market" (Note: Taxpayer stated in his rebuttal that he did not rent the Property before he purchased it.); and

4) an adjustment was made for the lot shape.

Based on the evidence, the board finds the Taxpayer failed to prove the assessment was disproportionate. The sale of the Property in 1990 was from an estate directly to the Taxpayer which raises questions as to reasonable exposure to the market and the urgency by the estate to sell. Therefore, the sale is not considered conclusive evidence of the Property's market value.

The conclusion of the Taxpayer's appraisal is questionable due to the use of the auction sales and comparables dissimilar as to location and property type. The appraiser did not mention that two sales were auction sales, and thus,

appraisal is somewhat less credible.

While the Taxpayer did not fulfill this burden of proof, the board must comment on the Town's lack of submitting the most comparable sales that were used during the revaluation to support the assessment (except the Irion sale which, based on the assessment card, is significantly larger than the Taxpayers). RSA 75:1 requires that assessments be in line with market value. Therefore, providing sales is essential for the board to compare the Property's assessment with fair market value and the general level of assessment in the municipality. See Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986).

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

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John A. Nikander, Taxpayer; and Chairman, Selectmen of Holderness.

Dated: May 6, 1993

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Melanie J. Ekstrom, Deputy Clerk

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