Barbara Mailly Norman

v.

Town of New Hampton

Docket No.: 11120-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of $44,900 (land only) on a 15.4 acre lot (the Property). For the reasons stated below, the appeal for abatement 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 her burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) an appraisal as of April 1991 estimated the value at $18,000;

(2) the land along the frontage drops severely away from the road and would be a factor in developing a site for residential purposes; and

(3) the parcel should be considered as a single lot, and most sales of lots range from $14,000 to $22,000.

The Town argued the assessment was proper because:

(1) the lot does have view potential;

(2) the lot's slope is 14% but with some site and driveway work could be built upon; and

(3) with the zoning lot requirements of 150 feet frontage and one acre of usable land, the lot has the legal potential of five lots but economically the potential for two lots.

Board's Rulings

We find the correct assessment should be $34,650.

Based on the evidence, the board determines the topography adjustment should be reduced to .40 and the rear land calculated as all poor land. This calculation is supported by the testimony that the frontage in most areas drops off quite steeply from the road and would require some site work to provide access to a buildable site.

The board finds both the testimony of the Town and the highest and best use determination in the Taxpayer's appraisal indicates there is the potential for two possible lots with this tract. The sales evidence submitted by both parties indicates average lot values to be in the $20,000 to $25,000 range. The board finds that a lot value as low as $14,000 as indicated by one of the Taxpayer's sales represents the very low end of lot value and quality. Further, the board finds the supplemental land which would allow for a second additional lot should have a value of approximately $1,000 to $1,200 per acre. The supplemental land value contained in the Taxpayer's appraisal above 5 acres appears to be significantly lower than the board's experience and is more in line with larger, more remote tracts. Thus, the board's revisions to the Town's assessment is supported by the findings of a 5 acre lot value of $20,000 to $25,000 and $1,000 to $1,200 for the additional 10.4 acres.

If the taxes have been paid, the amount paid on the value in excess of $34,650 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992, 1993 and 1994. 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 thirty (30) 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 in 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. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

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 Kathleen Collins, representative for the Taxpayer; and Chairman, Board of Selectmen of New Hampton.

Dated:July 13, 1995

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Valerie B. Lanigan, Clerk

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