WE Development Corp.

v.

Town of Plaistow

Docket No.: 11413-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of: Map 89-1/Lot 10 - $65,600 (a 1.33 acre lot); and Map 90-1/Lot 9 - $84,800 (a 3.01 acre lot) (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessments were 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.

The Taxpayer argued the assessments were excessive because:

(1) both lots have significant amount of wetlands under conservation easements allowing no building;

(2) both lots are accessed by a common drive

(3) the building sites are a significant distance from the road; and

(4) the Towns comparables do not have the wetland and conservation easements issues such as the subject lots do;

(5) the Town reduced the assessments in 1992 to less than half their 1991 assessments.

The Town argued the assessments were proper because:

(1) the lots were assessed comparably and by the same methodology with other properties;

(2) lots were generally worth $40,000 in 1991;

Board's Rulings

Based on the evidence, we find the correct assessments should be: lot 9 $47,800 and lot 10 $47,200. These assessments are ordered because:

1) the board finds the Town used inconsistent methodology in valuing these two lots relative to other properties;

2) the Taxpayer's sale of the lots in 1993 and 1994 give some indication of market value;

3) the extensive area of wetland and conservation easement on the lots and the distance of the building site from the road are factors the Town did not adequately account for (see Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975)); and

4) based on the testimony of both parties, the 1991 market value of both lots was approximately $35,000; the revised assessments of $47,800 and $47,200 approximate a market value of $35,000 if the 1991 equalization ratio of 135% is applied ($47,800 ÷ 1.35 = $35,407; $47,200 ÷ 1.35 = $34,963).

The board finds the assessment for the lots should be calculated as follows:

Lot 9

Frontage: 100' x $550 x .8 x .8 x .8 = $28,150
(topo.) (undev. factor) (access)

Rear acreage: 2.55 acres x $11,000 per acre x .7 = $19,650
(size/quality factor)
total $47,800

Lot 10

Frontage: 150' x $550 x .8 x .8 x .8 = $42,250
(topo.) (undev. factor) (access)

Rear acreage: .64 acres x $11,000 per acre x .7 = $ 4,950
(size/quality factor)
total $47,200

If the taxes have been paid, the amount paid on the value in excess of the assessments found above shall be refunded with interest at six percent per annum from date paid to refund date.

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 Page 4

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 WE Development Corp., Taxpayer; and Chairman, Board of Selectmen of Plaistow.

Dated: May 5, 1995

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Valerie B. Lanigan, Clerk