John A. Santini

v.

Town of Wentworth

Docket No.: 11484-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of $44,200 on a vacant, 5-acre lot (the Property). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. However, after reviewing the written submittals and due to the complexity of this case, the board decided to hold a hearing to arrive at an appropriate 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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to meet his burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:
(1) the Property has limited building area due to its size and topography;
(2) the Property is affected by the 100-year flood plain, its only access is

by a gravel road in severe disrepair, and the land is wet and has ledge and steep terrain;

(3) a realtor estimated only a $20,000 market value;

(4) the taxes increased by a factor of 12 in three years;

(5) the King lot -- a 15.9-acre lot with mountain views, fishing holes, and several building lots -- was listed for $40,000, yet was assessed at only $36,000 from 1989 forward;

(6) the Property was listed for $55,000 in 1987 and reduced to $36,000 by 1991 with no potential buyers;

(7) the Property has not sold for several reasons, including concerns about the future use of the King property; and

(8) the assessment should be only $20,000;

The Town argued the assessment was proper because:

(1) in 1990, the assessment was reduced from $74,700 to $44,200 to address the Property's topography and the flood-plain issue;

(2) the Taxpayer appealed again in 1991 because of the flood plain, but the appeal was denied because that issue was already addressed; and

(3) the King lot is not comparable to the Property because it is entirely within the 50-year flood plain, the lot is landlocked, and there are no building lots, all of which resulted in the lot being taken off the market.

Board's Rulings

Based on the evidence, the board finds that the Taxpayer failed to carry his burden and failed to submit to the board any evidence of his basis for a $20,000 valuation by a real estate broker. The only evidence of market value

was multiple listing land descriptions of the Taxpayer's comparable (15.9 acres) owned by King and the realtor's opinion.

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).

The Taxpayer's complaint about the assessment increase holds no merit. Increases from past assessments are not evidence that a taxpayer's property is disproportionally assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985).

The Taxpayer's case was not helped by the comparison to the King property. The King property has several deficiencies -- entirely in the flood plain, no road frontage, possibility of no buildable site -- and the King lot's assessment reflected these problems. The King lot apparently has record access over the Property, and correcting the King assessment card might increase the King assessment, but it would not affect the Property's assessment. In other words, the King lot may have been underassessed. However, the underassessment of another property does not prove the overassessment of the Taxpayer's Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayer's assessment because of underassessment of the King lot would be analogous to a weights and measure inspector sawing off the yardstick 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. E.g., id.

The major defect in the Taxpayer's case was the lack of market data. To carry his burden, the Taxpayer 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. This was not done, and the appeal must be denied.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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 reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

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

Dated:September 28, 1994

Valerie B. Lanigan, Clerk