Neet Development Corp.

v.

Town of Hooksett

Docket No.: 11598-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessments on twenty-three "Properties" in Mammoth View Estates, totalling $1,429,900. For the reasons stated below, the appeal for abatements 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). The board finds the Taxpayer showed the assessments were in error, but we reject the Taxpayer's unsupported assertions of the Properties' values.

The Taxpayer argued the assessments were excessive because:

(1) the Property consisted of 5 partially finished shells and 23 lots in Mammoth View Estates;

(2) the Property was purchased at auction in September, 1991, and at the auction, the following was announced:

a) the subdivision approval was subject to an injunction;

b) no building permits would be issued until the developer installed a sewer line with pumping station (estimated at $300,000-$400,000);

c) approximately 4 acres of wetland mitigation had to be performed;

d) the road from Castle Drive to Golden Gate Drive had to be topcoated;

e) $45,000 of back taxes had to be paid;

(3) in 1992 and 1993 13 or 14 lots were sold at prices of $20,000 to $25,000 each with permits in place; and

(4) the total fair market value of the Properties was $300,000 to $350,000.

The Town argued the assessments were proper because:

(1) assessments of three other subdivisions (two being paper street subdivisions) supported the assessments;

(2) an adjustment of 20% was made for the lack of water and sewer and the road not being topcoated;

(3) no overall adjustment for the wetlands was made, and any such adjustment would be on a lot-by-lot basis; and

(4) no adjustment was made for the injunction.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be $822,700. As explained, this assessment was calculated by deducting certain development costs from the anticipated value of the lots when individually sold.

This case has been a source of frustration for the board. The Taxpayer has the burden of proof, but it did a poor job of presenting the board with information that could be relied upon in determining the proper assessments.

The Taxpayer did not present market data to the board, and the information concerning the development costs that was presented was poorly documented and inconsistently presented. For example, the Taxpayer's August 25, 1995 letter stated $6,000 was spent for engineering while the attached bill was for $5,600. During the hearing, the Taxpayer stated that the additional road improvements cost $50,000 when the attachment to the August 1995 letter stated $34,000 was the actual cost. Concerning the sewer costs, the Taxpayer used a $200,000 figure at the hearing, a $250,000 figure in the August 1995 letter and a $211,000 figure in an attachment to the August 1995 letter. This sloppiness and lack of detail work and documentation typified the Taxpayer's case.

The Taxpayer did show it was entitled to an abatement because the Town did not address at all the lack of subdivision approval. Further, the board is not convinced the Town addressed the need for the sewer extension, the wetlands mitigation and the additional roadwork. While the Taxpayer raised these issues, the Taxpayer did not show what the proper assessments should have been.

But for Appeal of Sokolow, 137 N.H. 642 (1993), the board would have denied this appeal due to the Taxpayer's total failure to show what the Properties were worth on April 1, 1991. Sokolow, however, can be read to impose a duty on the board to conduct its own investigation and analysis when the Taxpayer has clearly shown overassessment due to an objective error in the assessment. The Taxpayer made such a showing here.

The Town may be unhappy with the board calculating an assessment when the Taxpayer failed to do so. Sokolow, addressed this from a legal standpoint.

The Town has brought this decision down on itself by abdicating its assessing obligations. See RSA 75:1 (assessments must be based on market value), RSA 75:7 (assessor must swear that the values are based on market information); RSA 75:8 (assessor required to annually review assessments with adjustments as warranted); see also Paras v. City of Portsmouth 115 N.H. 63, 68 (1975) (assessments must include consideration of all factors).

The board, pursuant to its Sokolow obligation, had its board inspector review the file and prepare a report, the report was provided to all the parties, recommending adjusting the assessment by 15% to 60%. His report also correctly pointed out that the Taxpayer's appraisal information could not be relied upon in any way because the Taxpayer did not provide a complete copy of the appraisal. Additionally, neither the Town nor the Taxpayer presented the board with any 1991 market information concerning sales of similar lots.

Given the vacuum of information, the board has analyzed this case based on the only information that was provided to it -- the assessments and the Taxpayer's further development costs.

As pointed out above, the Taxpayer gave conflicting information and improper documentation for the costs required to complete this development. The board has found the following costs based on the actual costs incurred by the Taxpayer. Additionally, the board included an additional 20% of the equalized value to reflect risk, holding period and miscellaneous costs.

	Actual Costs
Sewer	$200,000 (not documented)
Wetlands work	$ 25,000 (see 11/3/92 agreement)
Wetlands Engineering	$ 7,650

Engineering Resubdivision	$ 5,600
Final Roadwork	$ 34,000
Total Actual Expenses	$272,250 (rounded)
*Additional Allocation (for risk, holding costs & misc.)	$242,360
TOTAL DEVELOPMENT	$514,600

*20% addition for risk, holding period and miscellaneous
($1,429,900 assessment ÷ 1.18 ratio = $1,211,800 equalized value x .2)

The board deducted the development costs from the equalized value, arriving at a fair market value, which was then increased by the equalization ratio, resulting in an $845,825 assessment.

$1,211,800	equalized value
- 514,600	development costs and risk
$ 697,200	fair market value
x 1.18	equalization ratio
$ 822,700	assessment

While the board admits that this is a very rough way to approach this case, the board did not have before it any other information upon which to base a decision. We do not read Sokolow as requiring us to go out and do extensive market research to, in essence, make the Taxpayer's case. Specifically, in Sokolow, 137 N.H. at 644, the court mentioned the valuation information that the board had been provided. Finally, while the Taxpayer may

be disappointed with the magnitude of the ordered assessment, the Taxpayer has the burden of proof, failed to carry it, and thus, our adjustments must be conservative.

If the taxes have been paid, the amount paid on the value in excess of $822,700 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, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1992, 1993, 1994 and 1995. 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. For example, the Town may adjust the assessments to the extent approvals were obtained and work performed in subsequent years.

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, <u>not the date this decision is received</u>. 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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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Neet Development Corporation, Taxpayer; and John Temchack, Assessor, Town of Hooksett.

Dated: March 27, 1996

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Valerie B. Lanigan, Clerk