David S. & Carole E. Robinson

v.

Town of Sunapee

Docket No.: 12259-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of:

Map 17 Lot 27: $415,600 (land $366,500; buildings $49,100)

Map 17 Lot 31: $37,200

Map 17 Lot 32: $34,000

Lot 27 consists of a seasonal cottage on a .4 acre lot on Lake Sunapee. Lots 31 and 32 are "back lots" behind lot 27 both approximately one third acre in size. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers carried their burden.

The Taxpayers argued the assessments were excessive because:

(1) lots 31 and 32 are unbuildable due to their size and wetness;

(2) an appraisal as of October 1992 (Hill appraisal) estimated the market value of lot 27 at $240,000;

(3) even the two highest sales contained in the Hill appraisal, the Cunningham and the Jenkins properties, were in the $270,000 to $290,000 range;

(4) the Jenkins sale was a foreclosure sale but is representative of the market because anyone could have stepped up and purchased the property;

(5) there are several properties in the immediate neighborhood that have been on the market and not sold in the past several years; generally there were many properties on Lake Sunapee (300) listed for sale in 1991 as opposed to only 12 or so available in 1988; and

(6) the cottage is small, uninsulated and of lesser quality than the comparables submitted by the Town.

The Town argued the assessments should be reduced as follows to reflect errors in the improvements and the unimproved aspect and wet conditions of the unimproved lots:

Map 17 Lot 27 - $393,200 ($366,500, land; $26,700, buildings)

Map 17 Lot 31 - $23,400

Map 17 Lot 32 - $23,700.

The Town argued the revised assessments were proper because:

(1) a sales analysis using three comparable sales indicates a market value of $345,000;

(2) Town's comparable #1, which sold for $385,000, is the most comparable because it is in the same cove and received the least amount of adjustments.

Board's Rulings

Based on the evidence, we find the correct assessments should be:

Map 17 Lot 27 - $348,100

Map 17 Lot 31 - $23,400

Map 17 Lot 32 - $23,700.

The assessment of $348,100 for lot 27 is based on a finding of market value of $295,000 equalized by the Town's 1991 equalization ratio of 118% ($295,000 x 1.18).

The market value estimate of $295,000 was determined from a revision of both the Taxpayers' Hill appraisal and the Town's appraisal (Exhibit - Municipality A).

First, the three Newbury comparables in the Hill appraisal were adjusted $50,000 each, based on the Town's testimony, for their inferior general location in Newbury, and the Cunningham and Jenkins sales were adjusted by a 15% factor for the duress nature of the sales (foreclosure sale, bank sale, etc.). It has been the board's experience that properties that are sold at foreclosure and by lending institutions have generally brought between 60% and 90% of market value as indicated by more arms-length sales. (The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence)). These adjustments indicated a value range of $229,700 to $295,000 with most of the sales in the $280,000 to $295,000 range.

Second, the board revised the Town's analysis using the equalized assessment differences in the Property and the three comparables as the adjustments. This revision indicated a value range of $243,100 to $345,700. However, comparable #1, which the board agrees is the most comparable, indicated a value of $296,500.

The board finds the Town's revised assessments for lots 31 and 32 reasonably reflect the undeveloped status and topography issues with the lots. The Taxpayers did not submit any market evidence to refute the Town's revised assessments.

If the taxes have been paid, the amount paid on the value in excess of $348,100 (lot 17), $23,400 (lot 31) and $23,700 (lot 32) 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. 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 Page

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 David S. & Carole E. Robinson, Taxpayers; and Chairman, Board of Selectmen of Sunapee.

Dated:July 6, 1995 _____
Valerie B. Lanigan, Clerk

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