Peter H. & Esther L. Estabrooks

v.

Town of Jefferson

Docket No.: 12284-91PT

DECISION

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

Map/Lot #	Land Assessment	Bldg. Assessment	Total Assessment
5A/33	$10,500	$119,200	$129,700
5A/34	$20,800	$118,700	$139,500
5A/35	$2,200		$2,200
5A/45A	$42,600		$42,600

Map 5A/33 is a market on a .17 acre lot; Map 5A/34 is a 2-story apartment building with four one-bedroom apartments and garage on a .35 acre lot; Map 5A/35 is a .10 acre lot; and Map 5A/45A is a parking lot and vacant land consisting of 6.03 acres (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessments were 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 this burden and proved disproportionality.

The Taxpayers argued the assessments were excessive because:

Lot 45A

(1) it would be impractical to subdivide the lot due to the high ledge and the major expenses related to septic systems;

(2) the lot has been excessively assessed when compared to Lots 45, 45B (which looks out at Mount Washington) and 14;

(3) a recently installed drainage system associated with the sewer project drains onto a portion of the frontage (50 to 75 feet of 275 feet of frontage) making it unusable;

(4) Lot 45A was purchased for $10,000 in 1988 or 1989; and

(5) a fair assessed value as of April 1, 1991 should be $9,000;

Lot 35

(1) Lot 35 has no improvements on it but does have approval (1987) to build a branch bank on it;

(2) the lot is overassessed when compared to Lots 39, 42B and 56; and

(3) a fair assessed value as of April 1, 1991 would be $1,000;

Lot 34

(1) one-quarter of the rental area is a gutted-out shell area only functional for storage;

(2) subdivision approval was denied; the land is overassessed when compared to Lots 32, 36 and 39 which have similar uses;

(3) the garage cannot service trucks as the doors are only 12 feet high and the ceiling is approximately 13 feet 2 inches, not 15 feet as the Town asserts

and no investment has been made to bring the property to retail quality;

(4) the ability to operate the garage has been curtailed because the Town will not approve the inspection permit; and

(5) a fair assessment as of April 1, 1991 would be $114,900.

Lot 33

(1) the land and building are overassessed when compared to Lots 24, 47A and 5; the lot receives drainage from an adjoining parcel uphill which impacts the utility of the property;

(2) the laundry room and storage area needs a floor, drop ceiling and heating system to be of the same quality as the existing retail space;

(3) the back side of the building has rotted from the drainage problem;

(4) the canopy is only a half-canopy not a full one;

(5) the property is not marketable because there is an issue in the Supreme Court on whether or not the underground fuel tanks are in compliance; and

(5) a fair assessment as of April 1, 1991 would be $75,300.

The Town stated the equalization ratio in 1991 was 98% and 132% in 1992 and argued the assessments were proper because:

Lot 45A

(1) consideration was given for the lot's use (the lot has the ability to be improved commercially), view and wetness; and

(2) the Taxpayers' comparable Lot 45B does not have the view that the subject has, and Lot 14 sits behind the subject and has a right-of-way off Route 2.

Lot 35

(1) an acreage change from .11 to .10 was made to the lot;

(2) the lot was assessed as unbuildable as the appraiser was not aware that

there was approval to construct a bank on the lot; if the appraiser had that knowledge, the assessment would have been approximately $6,500; and

(3) the lot is underassessed.

Lot 34

(1) the acreage was corrected and assessed as one lot;

(2) the area on the first floor which is unfinished was depreciated as a condition factor of the building;

(3) the garage ceiling height was estimated.

Lot 33

(1) the acreage and building area were corrected;

(2) the basement is 4 feet high and was assessed because of its use and to be consistent with other assessments in Town;

(3) a wall did separate the main area of the store but the use was retail and was assessed as part of the store;

(4) the Taxpayers presented no documentation or real proof that the environmental problems existed in 1991.

Board's Rulings

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

Lot 33 $111,850 (land $10,500; building $101,350);

Lot 34 $117,950 (land $20,800; building $ 97,150);

Lot 35 $ 6,500 (land only); and

Lot 45a $ 31,100 (land only).

The total of the four lot assessments is $267,400.

In arriving at these ordered assessments, the board viewed the Property (all four lots) principally as a singular economic unit but also reviewed on a

lot by lot basis the various factors that would impact on the market value of the several lots and buildings.

Based on the evidence, the board finds the lots do have the ability to be transferred separately and owned separately. However, in arriving at an appropriate value for any property, the highest and best use must always be determined. In this case, the board finds that while the lots could be legally sold separately, the highest return to any owner would be for the lots to be continued to be held and managed in one ownership. The small size of the lots, the adjoining nature of the several buildings and the need for parking area to support the commercial uses of the lots on the north side of Route 2 cause the board to reach this determination.

Thus, in arriving at a proper finding of market value for the Property, the board has always looked to the total assessment of the four lots to determine if that assessment is reasonable and proportional. The board finds the Town's total assessment of $314,000 to be excessive based both on the testimony as to the various factors and conditions affecting the several lots and on the sale of the other general store in Jefferson for $135,000 in April of 1990 (Beal property). While it is difficult to draw a direct comparison between the Taxpayers' Property and the Beal property due to the unique characteristics of both general stores, it is however a significant sale of the only other general store in Town and is thus given some weight by the board in determining the relative proportionality of the Taxpayers' Property.

Specifically, the board finds the proper assessments to be as follows:

<u>Lot 33</u>

The board finds the proper assessment to be $111,850. This revised

assessment is based on applying an additional 10% depreciation to the building to account for several factors the Town did not adequately consider. Those factors are:

1) the general layout of the store and the lack of extensive retail finish area in the laundromat area;

2) the limited utility of the basement area;

3) the affect of the drainage on the rear of the building; and

4) the unresolved underground tank issue with the New Hampshire Department of Environmental Services (DES).

On this last factor the board agrees that the Taxpayers have not shown conclusively that there existed a regulatory or environmental concern relative to these tanks. However, the mere existence of the DES' concerns and the Taxpayers' legal challenge to them would have had, to some extent, a chilling effect on the market value of the Property until the issue was resolved.

Lot 34

The board finds the proper assessment should be $117,950. This assessment is reached by applying an additional 10% depreciation to the building valuation for the following factors:

1) the general poor physical condition of the apartment exterior;

2) the gutted and under renovation status of the first floor of two of the four apartment units as of April 1, 1991;

3) the mixed use (residential apartments and commercial garage) of the lot; and

4) the physical limitations due to garage door height and garage ceiling height to fully utilize the garage for repairs of large trucks.

Lot 35

The board finds the proper assessment should be $6,500. The Town based their assessment of $2,200 on the misunderstanding that the lot would have limited or no building capability due to its size. During the hearing the Taxpayers testified they had

obtained in 1987 a special exception to permit a branch bank or in the alternative a drive-through fast food building on the lot. This right obtained through a special exception is a right that is transferrable with the Property and enhances the value of the lot and should be recognized in its assessment. The $6,500 estimate is based on the Town's testimony that it would have assessed the lot for approximately that amount if it had known of the lot's ability to be built upon.

Lot 45A

The board finds the proper assessment should be $31,100. This assessment is based upon revising the Town's condition factor on its first land line from 1.75 to 1.25. This reduction is reflective of the following factors the board finds affected the market value of this lot:

1) the drainage onto a portion of the frontage and lot from the opposite side of Route 2;

2) any further extensive development of this lot would be on its lower terrace where there is a lesser view than from the parking lot and in soils that would be expensive in which to build a septic system; and

3) the undeveloped status of the lot (except for the filled parking area adjacent to Route 2) and the cost attributed to accessing and developing the lot given its high ledge and wetland features.

The board finds the majority of the value of this lot is created by its use and association for parking and signage for the commercial lots on the northern side of Route 2. Thus, the common ownership with the lots on the northern side of Route 2 and its integrated use is a factor that would affect its market value and, thus, should be considered in its assessment.

The board gives little weight to the Taxpayers' testimony of closing on the Property in 1988 or 1989 for $10,000 because the agreement to purchase for the $10,000 occurred in 1983.

If the taxes have been paid, the amount paid on the value in excess of $267,400 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. Because the Town testified that it underwent an assessment update in 1993, the board's decision does not apply to years subsequent to 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

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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Paul B. Franklin, 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 Peter H. & Esther L. Estabrooks, Taxpayers; and Chairman, Board of Selectmen of Jefferson.

Dated: May 17, 1995

_____
Valerie B. Lanigan, Clerk

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ORDER

This order relates to the "Taxpayers'" rehearing motion. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3. The Taxpayers also sent the board documents containing new evidence. The record was closed at the hearing held on April 25, 1995 and the board has completed their deliberations. Therefore, the board is unable to accept further evidence.

Motion denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Peter H. & Esther L. Estabrooks, Taxpayers; and Chairman, Board of Selectmen of Jefferson.

Date: July 11, 1995

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Valerie B. Lanigan, Clerk

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