Charles S. and Nancy C. Wetterer

v.

Town of Hopkinton

Docket No.: 12324-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of $276,450 (land $89,950; buildings $186,500) on a 73-acre lot (70.5 acres are in current use) with a house (the Property). The Taxpayers also own, but did not appeal, two other lots in the Town with a combined, $700 current-use assessment. For the reasons stated below, the appeal for abatement is denied.

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 failed to carry their burden.

The Taxpayers argued the assessment was excessive because:

(1) the rear acreage of 66 acres in current use is improperly classified;

(2) the home has only 2 bedrooms and should correctly be classified a 4; and

(3) the fair market value of the entire Property (including land in current use) as of April, 1991 is between $375,000 and $400,000.

The Town argued the assessment was proper because:

(1) the current use classifications pretty much fit into what the soil scientist described except for the wet area; in order for the land to be classified as wet, it must be completely under water;

(2) three separate appraisers have inspected the house and all felt it was properly graded a 4½ and there is a finished basement with bedroom, kitchen area and bath;

(3) the chart submitted by the Taxpayers (TP Ex. 3) was established by the Department of Revenue Administration as a table and guide only for training purposes; and

(4) comparable sales support the assessment.

Board's Rulings

We find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment. The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers 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.

The Taxpayers argued the home was improperly classified and should be rated a 4 rather than a 4½. However, the Taxpayers provided no photographs of the subject Property, no construction plans or any other documented proof of the quality of the home to support their claim.

Further, the board declines to rule on the appropriateness of ad valorem assessment calculations depicted on the assessment-record card that are negated by that portion of the Property being actually assessed and billed under current use. The board finds the Taxpayers are not "aggrieved" by those calculations because: 1) they do not affect the final assessment; and 2) if at sometime in the near future they are the basis for the determination of a land use change tax (RSA 79-A:7), the Taxpayers have a remedy of appeal pursuant to RSA 79-A:10.

A motion for rehearing, reconsideration or clarification (collectively "rehearing 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 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 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
George Twigg, III, Chairman

_____
Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Charles S. and Nancy C. Wetterer, Taxpayers; Mary E. Pinkham-Langer, Agent for the Town of Hopkinton; and Chairman, Selectmen of Hopkinton.

Dated:December 30, 1994

_____
Valerie B. Lanigan, Clerk

0006