Steven E. Melanson

v.

Town of Orange

Docket No.: 12355-91-PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of $28,600 (land only) on 35 acres (the Property). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following 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 carry this burden.

The Taxpayer argued the assessment was excessive because:

1) it increased by 800% due to the revaluation;

2) the Property is a back lot with only a right-of-way (right to pass across another person's property) and its value is only to the extent of logging which has occurred over the last 50 years; and

3) the Town has assessed 1 of the 35 acres as a homesite, yet there has never been a home on the Property and there should not be a separate assessment on this acre.

The Taxpayer in his rebuttal stated:

1) the Property should be assessed on its present use;

2) a 12-foot right-of-way is very minimal and barely passable;

3) there is no evidence on the Property to indicate that a homesite or multiple homesites are being built; and

4) a proper assessment would be $17,850.

The Town argued the assessment was proper because:

1) a property's actual use can be different from its highest and best use;

2) even though the Property only has a right-of-way, it does not preclude the site from being improved and having access over the right-of-way;

3) the method of valuation does not suggest that multiple lots exist, rather it is only for ad valorem assessment purposes as the parcel is assumed to have at least one buildable site;

4) the Taxpayer could place the Property in current use and minimize the tax if he had no immediate plans to develop a homesite; and

5) the assessment is correct and consistent with other properties.

Board Findings

The board finds the assessment should be based on the highest and best use as perceived by the market. To tax a property which is under utilized on the basis of its present use would result in an underassessment of

the subject property.

The assessment does not assume potential for multiple lots.

If the Taxpayer wishes to put the entire 35 acres in current use he may. At the time a building is erected in the future and the area built upon no longer qualifies for current use, a land use change tax of 10% of the ad valorem value shall be imposed by the Town for that area necessary to support the building (not limited to the footprint of the building or to the minimum lot size as promulgated in the town zoning regulations).

As stated above, the focus of our inquiry is proportionality, requiring a review of the assessment to determine whether the property is assessed at a higher level than the level generally prevailing. Appeal of Town of Sunapee, 126 N.H. at 219; Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982). There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the Municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this 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.

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).

The Taxpayer argued the assessment should be reduced because the market for the Property has been declining. Evidence of a declining market alone is not a basis for reducing an assessment no more than evidence of an appreciating market is a valid basis of increasing an assessment. The issue is proportionality. The Taxpayer needs to make a showing that the Property has changed in value to a greater extent than that indicated by the change in the general level of assessment in the Town as a whole to prove his property is disproportionately assessed.

We find the Taxpayer failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

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

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Steven E. Melanson, Taxpayer; and the Chairman, Selectmen of Orange.

Dated: September 7, 1994

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Melanie J. Ekstrom, Deputy Clerk