Mary B. and James G. Galanes, Jr.

v.

Town of Chesterfield

Docket Nos.: 12392-91PT, 13110-92PT and 14318-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" assessments as follows: 1991--$468,800, 1992--$365,200 and 1993--$355,400 on a .5-acre lot with a 2.5-story victorian house on Spofford Lake (the Property). For the reasons stated below, the appeals for abatement are 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 the burden of proof.

The Taxpayers argued the assessments were excessive because:

(1) they exceeded the values determined by an appraiser: 1991--$280,000, 1992--$286,000, and 1993--$270,000;

(2) the Property cannot be lived in year round because of some winterization needs and because of the need for septic approval;

(3) the Town's methodology for front feet was inconsistent and disproportional; and

(4) the proper assessments should have been the appraised value times the equalization ratios.

The Town argued the assessments were proper because:

(1) the Town has adequately reviewed the abatement requests;

(2) the Taxpayers' appraisals were flawed (The Town explained these at the hearing, including questioning the comparables used, the adjustments that were made to the comparables and the appraiser's objectivity.);

(3) the values were best indicated by the assessments, including the 1992 assessment that was based on lake sales, albeit sales of noncomparable properties;

(4) Mr. MacArthur's ratio study supported the lake assessments;

(5) they were based on the board's ordered assessment; and

(6) two 1994 sales supported the land values on the lake.

Board's Rulings

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

1991 $371,000;

1992 $334,740; and

1993 $341,250.

These assessment are based on the following market values, which were then adjusted by the applicable equalization ratios:

1991 $350,000;

1992 $325,000; and

1993 $325,000.

After listening to the parties and reviewing the evidence, the board concluded the following.

Valuing this lakefront property was not and is not an easy or a precise science. It reminds the board of the supreme court's statement that "`the search for fair market value is a snipe hunt carried on at midnight on a moonless night.'" Fusegni v. Portsmouth Housing Authority, 114 N.H. 207, 211 (1974)(citations omitted.). This is not to say the board's search for a proper value is unguided and without basis. Rather, finding value involves informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence). We have done so here after careful consideration.

The Town argued the Taxpayers' appraisals should not be relied upon at all. We do not find them so flawed as to require complete rejection. We agree, however, that these appraisals cannot be accepted without some adjustments. But we think they warrant weight after adjustments. The appraisals presented one appraiser's judgment of the Property's value based on the available, albeit limited, market data. RSA 75:1 requires that assessments be based on market value, and thus, we have considered the appraisals to help the board understand the lakefront market.

We also note the Town provided very little market data for any of the years. This absence of data was especially noticed for 1992 and 1993 when the

Town revalued the lakefront properties. Thus, we are left with reviewing and adjusting the sales used in the appraisals with some consideration in 1993 of the

two land only sales.

1991

The Taxpayers' 1991 appraisal included two comparables. The Town challenged comparable 1 as not being a fair-market-value sale. The board is not convinced comparable 1 was not a market sale, but we have some questions about comparable 1's lower price when comparable 1 ($300,000 for 3,742 sf house, 1.91 acres, and 336 front feet) is compared to comparable 2 ($285,000 for 1,500 sf house, .45 acre and 99 front feet).

The board adjusted comparable 1 by adding $15,000 for topography, arriving at $292,500. We adjusted comparable 2 by adding $15,000 for topography and $23,000 for building condition, arriving at $352,600. (The board reduced the building condition adjustment, finding the itemization approach on the Property to be suspect.)

There was also a question about whether the association beach, docks and utilities added value to the Property. The Town asserted these rights added at least $10,000 of value. The Taxpayers' appraiser did not mention or address this issue. We find the amenities may or may not add value. Unfortunately, we did not receive sufficient information to decide. For example, the Property has 329 feet of frontage. With all that frontage already, would a buyer pay more for additional water access via the association's land? Also, the Property is next to the common beach and docks. Is this a detriment? We question the Town's conclusion, but the Town at least addressed this issue.

The board concludes, based on its judgment and the evidence, a proper market value estimate would be $350,000 for 1991.

1992 and 1993

The Town challenged two of the comparables--Hilco and Szmit--as not being fair-market-value sales. The Hilco sale, is not a market-value sale. A bank is not your typically motivated seller. There could be a case where such a sale was representative of market value, but the Taxpayers did not convince the board of that here. Nonetheless, the Hilco sale provides some evidence of value, albeit, the bottom end.

The Town did not show, however, the Szmit sale was not a fair-market sale. The 6% realtor's fee was not unusual, and the asking-price history was not unusual given the tumultuous market.

To get a better look at the Taxpayers' appraisal, we adjusted these comparables as follows.

1992 Hilco

-added $15,000 for topography

-added $1,500 for porch screen versus glass

-final adjusted value $302,560 (without adjustment for type of sale)

1992 Szmit

-added $15,000 for lot size

-added $15,000 for topography and proximity to road

-final adjusted value $315,870

1993 Szmit

-added $4,000 for basement correction

-added $15,000 for topography and proximity to road

-final adjusted value $289,000

These adjustments indicated a value range, based on the Taxpayers' appraisals, of $315,870 to $302,550 for 1992 and $289,000 to 251,700 for 1993.

In 1992 and 1993, while no information was provided to board, the Town revalued the lakefront properties based on a sales analysis. The board gives this some weight, i.e., the Town reviewed the Property's assessment and recalculated it based on a new sales analysis and, presumably, consistent with other lakefront properties.

The board concludes, based on its judgment and the evidence, proper market value estimates for 1992 and 1993 would be $325,000.

If the taxes have been paid, the amount paid on the value in excess of the assessments stated above 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 1994 based on the ordered 1993 assessment. Until the Town undergoes a general reassessment, the Town shall use the ordered 1993 assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). However, the

existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.)

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 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

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Dennis J. Chapman, Agent for Mary B. and James G. Galanes, Jr., Taxpayers; and Chairman, Selectmen of Chesterfield.

Dated:February 2, 1995 _____

Valerie B. Lanigan, Clerk

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