John and Eileen Varoski

v.

Town of Belmont

Docket No.: 12416-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of $40,700 on a manufactured home (the Property). The Taxpayers 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 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 this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

1) the manufactured home was purchased in 1988 for $35,000;

2) the land belongs and was taxed to the Association, and the Town provides no services except for sewerage;

3) the Property was separated from the water by the Winnie (MSTL), railroad tracks, a camp, a road, and another camp;

4) the odor from the main sewer trunk-line was annoying and may be a health hazard;

5) manufactured homes have depreciated in value and the decrease was not reflected in the valuation of the Property; and

6) a proper value was $33,650.

The Town argued the assessment was proper because:

1) the argument that the Town does not provide any services was not a valid reason for an abatement;

2) the Property was not being taxed for the land, and was not being assessed for a waterfront influence;

3) the Town does not own and has no control over the WRBP sewer line; and

4) adjustments of 5% physical and 5% functional depreciation were applied.

The board's inspector reviewed the assessment-record card, reviewed the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did <u>not</u> perform an on-site inspection. This report concluded the assessment was proper. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation. In this case, the board gave no weight to the inspector's

report.

Board's Findings

Based on the evidence, we find the Taxpayers failed to prove the Property is disproportionately assessed for the following reasons:

1) Lack of municipal services is not necessarily evidence of disproportionality. As the basis of assessing property is market value, as defined in RSA 75:1, any effect on value due to lack of municipal services is reflected in the selling price of comparables and consequently in the resulting assessment. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

2) 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 testified the purchase price was $35,000 in 1988. While this is some evidence of the Property's market value, it is not conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1990). The assessment under appeal is as of April, 1991, and the Taxpayers offered no evidence of the market condition as of that date.

3) Neither party challenged the Department of Revenue

Administration's 1991 equalization ratio of 1.26 which indicated that all real estate was assessed 26% above market value in 1991. The assessment of $40,700 when equalized assumes a fair market value of $32,300 as of April, 1991.

4) The Taxpayers offered no market evidence to indicate what effect, if any, the sewer line would have on the value of the Property.

5) The Property has not been assessed for land or water influence.

The board must comment on the Town's brief. The Town failed to submit any sales to support the assessment. Since the Town was recently revalued, the Town should have submitted sales for the board's consideration. RSA 75:1 requires that assessments be in line with market value. Therefore, providing sales is essential for the board to compare the Property's assessment with fair market value and the general level of assessment in the municipality. See Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986).

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to John and Eileen Varoski, Taxpayers; and Chairman, Selectmen of Belmont.

Dated: November 29, 1993

Melanie J. Ekstrom, Deputy Clerk