Nancy C. & Arthur F. von der Linden, Jr.

v.

Town of New Hampton

Docket No.: 12575-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of $93,200 (land only) on a .2 acre lot (the Property). For the reasons stated below, the appeal for abatement is 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 their burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the lot is split by the Meredith - New Hampton town line with the house in Meredith and the water frontage in New Hampton;

(2) the Town has the depth of the portion of the lot in New Hampton incorrect; and

(3) the Property should be valued at $67,041 based on an analysis of the assessments of the Chekoulias and Curran properties.

The Town argued the assessment was proper because:

(1) the total assessed value of the portions of the property in Meredith and New Hampton is $171,100, quite similar to an appraisal done in 1994 for the Taxpayer; and

(2) valuing the entire lot as if it were all in one taxing jurisdiction and then allocating the value based on the 4-3-2-1 principle supports the Town's assessment.

Board's Rulings

Based on the evidence, we find the correct assessment should be $79,700.

As stated during the hearing, this Property is a difficult one to properly assess. However, the board rules the Taxpayers' assessment in New Hampton must be based on a reasonable estimate of the Property's contributory value of the Taxpayers' entire estate in both towns because that is how the market would view the property. The board agrees with the Town that the proper way to determine the assessment is to begin with valuing the Taxpayers' estate as if it was all in one taxing jurisdiction. The board finds the Town's estimate of $138,000 assessed value for the entire lot (land only) is reasonable based on the limited market evidence submitted and the Taxpayers' testimony of a 1994 appraisal (not submitted) for $175,000.

The allocation of this total assessed value for the land between the two municipalities is what becomes difficult. However, the board agrees with the Town that a concept often referred to as the "4-3-2-1" theory is a reasonable method of allocating the value. This theory simply estimates that 40% of a parcel's value is contained in the first quarter closest to the factor influencing its value (in this case the waterfront) and then

diminishing to 30%, 20% and 10% in the remaining quarters. In this case because the lot is not rectangular, allocating the assessment strictly based on the Town's depth adjustment factor is not

appropriate because the lot becomes wider in the Town of Meredith. The board finds the most appropriate way to allocate is based on a proration of the land area in the respective towns applied to the 4-3-2-1 concept.

Therefore, the board has determined that a reasonable way in which to allocate the assessment in this case is as follows: .2 of an acre (area in New Hampton) ÷ .49 of an acre (total lot size) = .41 ÷ .5 (percentage of area in first two quarters) = .82 x .70 (4-3-2-1 estimate of the contributory value of first two quarters) = .574 x $138,800 = $79,700 (rounded).

The board finds that the Town's method of appraising the portion of the tract in New Hampton as if it were a stand-alone parcel contributed on a per-unit basis more value to the land in New Hampton than considering it as part of the entire estate. Another method for the Town to properly recognize the contributory value of the New Hampton parcel would have been to apply a distinct factor to the land assessment. The board notes that in this case a 15% adjustment would have arrived at a similar value of $79,200 and would have reasonably recognized the Town's assessment methodology inflated the per unit land value without consideration of the adjoining portion in Meredith.

The board finds the Taxpayers' analysis of the Chekoulias and Curran properties not conclusive because their analysis equates land size to value in a straight-line relationship. The market generally does not recognize such a straight-line relationship. Rather, the market generally indicates

higher <u>per-square-foot</u> prices for smaller lots than for larger lots, and since the yardstick for determining equitable taxation is market value (see RSA 75:1), it is necessary for assessments on a per-square-foot basis to differ to reflect this market phenomenon.

If the taxes have been paid, the amount paid on the value in excess of $79,700 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, 1993 and 1994. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. 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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George Twigg, III, Chairman

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Paul B. Franklin, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Nancy C. & Arthur F. von der Linden, Jr., Taxpayers; and Chairman, Board of Selectmen of New Hampton.

Dated: July 11, 1995 _____

Valerie B. Lanigan, Clerk

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