Thomas Nastasi Jr.

v.

Town of Antrim

Docket No.: 12946-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessments of $126,900 (land, $28,300; buildings, $98,600) identified as Map 5 Lot 863 and consisting of 3 acres with a dwelling and $1,800 (land only) identified as Map 5 Lot 864 being an access parcel opposite Lot 863 on Gregg Lake (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 201.04(e); 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) a professional assessment prepared by H. Bruce Hartgers, Chief Executive Officer

Division of the Phoenix Group, PVC., indicated the proper assessment to be $80,048 based on an equalized value of $117,717; and

(2) the lake frontage is only 50 feet not 100 feet as listed on the property record-card.

The Taxpayer also presented several pages of sales from a multiple listing service.

The Town argued the assessment was proper because:

(1) the Property has more acreage, water frontage and three times the square-footage of living area than the average of the Taxpayer's comparables and has two full bathrooms;

(2) the sales of the smaller lakefront cottages with inferior views ranging from $68,000 to $120,000 supports the estimated equalized value of $186,500;

(3) the Taxpayer's cost approach used a recreational cottage schedule which is inferior to the quality of the dwelling; and

(4) the Taxpayer did not support his estimate of $19,720 for the land value.

Board Findings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed for the following reasons:

1) The Taxpayer's "professional assessment" determined the value of the house using the cost approach. The house was classified as a "lakeside recreational cottage." The photographic evidence submitted by the Town shows a well-constructed, quality home and the Taxpayer's classification as a cottage is not supported.

2) The professional assessment determined a land value of $20,000 rounded.

This land value was not supported by any market data.

3) The Taxpayer submitted listings of comparable properties but did not submit an analysis of the comparables. Specifically, the Taxpayer should have included a comparison grid in which the subject was compared to the comparables with the appropriate adjustments. The Town, however, did conduct an analysis of the sales presented by the Taxpayer which indicated that the sales were not comparable to the Property.

4) The Taxpayer did not submit any proof that the water frontage was 50 feet. However, even if the water frontage is only 50 feet, the lot has an excellent view from the dwelling as evidenced by the photographs submitted by the Town, and the value assigned is not unrealistic.

5) In short, the Taxpayer did not present any credible evidence of the Property's 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 issue before the board in any appeal is whether the property is disproportionately assessed. Disproportionality is determined by examining market evidence, estimated market value of the property and then relating that market value to the general level of assessments within the community. For the 1992 tax year, the Department of Revenue Administration determined that the general level of assessment was approximately 69%. Based on the ratio, the indicated market value of the Taxpayer's Property is $183,900 ($126,900 ÷ .69). This indicated market value

based on a review of the evidence and the photographs depicting the building, lot and exceptional view.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 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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Paul B. Franklin, Member

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Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas Nastasi, Jr., Taxpayer; and Chairman, Selectmen of Antrim.

Dated:January 27, 1995 _____

Valerie B. Lanigan, Clerk

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