Donald J. and Sally F. Dussault

v.

Town of Meredith

Docket No.: 12982-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of $255,600 (land $214,700; buildings $40,900) on a 1.64-acre lot with a house (the Property). 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 their burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the land assessment is higher on a per-square-foot basis than seven other comparable properties in the area;

(2) the rear portion of the lot is ledgy and not usable;

(3) the lot is larger than most in the area because it was so ledgy more area was needed to accommodate a septic and a house site;

(4) the abutting property (Doscher) sold in June 1993 for $155,000 while being assessed at $287,500; and

(5) the Property had a market value of approximately $250,000 in 1992.

The Town argued the assessment was proper because:

(1) the Property was reviewed on-site and adjustments were made for the topography, water supply from the lake and the driveway and drainage easements related to the Property;

(2) the Doscher property had a failed septic system prior to its sale of which the Town was unaware;

(3) the equalized value of the revised assessment is less than the Taxpayers' opinion of market value of $235,000 to $250,000; and

(4) four sales of waterfront properties generally support the assessment level and methodology of waterfront properties.

Board's Rulings

Neither party challenged the Department of Revenue Administration's equalization ratio of 110% for the 1992 tax year for the Town of Meredith. The Property's equalized value is $232,364 ($255,600 ÷ 1.10). Thus, for the Taxpayers to make a showing of disproportionality, they needed to show the Property's market value was less than $232,000.

The board finds the Town's revised assessment of $255,600 reasonably addresses the concerns the Taxpayers have raised relative to the condition and utility of the lot. Further the Taxpayers testified that their opinion of market value as of 1992 was $250,000. This opinion of value exceeds the Town's equalized assessed value.

The board reviewed the Taxpayers' grid which compared their Property to seven other nearby properties. The board finds the differing land values on a per-square-foot basis does not prove disproportionality. The market generally indicates higher per-square-foot 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. The board finds the adjustments made by the Town to the comparable lots for the differing areas and frontages to be reasonable. Even assuming, for argument purposes, that several of the other properties were underassessed, the underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., id.

Further, the board finds the Doscher sale alone does not indicate the Property was disproportionally assessed. The board finds it is likely the Doscher purchase was affected by the litigation and uncertainty related to its failed septic system, and thus, it is difficult to compare the assessment, which did not recognize the failed septic system condition, to the actual sale price.

Lastly, the board expresses some concern with the extent of the reduction in the Taxpayers' assessment and the several changes in the methodology of valuing the improvements. The over 31% change from the original assessment of $371,800 to the current assessment of $255,600 does not instill confidence in the assessment process. However, the board recognizes that the current assessor has properly reviewed the Property and is striving for consistent methodology. Based on that review and revision, the board finds the assessment of $255,600 is reasonable and proportional.

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, <u>not the date this decision is received</u>. 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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Paul B. Franklin, Member

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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 Donald J. and Sally F. Dussault, Taxpayers; and Chairman, Board of Selectmen, Town of Meredith.

Dated:September 25, 1995

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Valerie B. Lanigan, Clerk

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