

Eugene C. and Gloria C. Winslow

v.

Town of Rumney

Docket No.: 13966-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessments of: \$142,150 (land \$95,850; buildings \$46,300) on Lot 128, a .75-acre lot with a single-family house; and \$9,800 on Lot 129, a vacant .10-acre lot (the Properties). For the reasons stated below, the appeal for abatements is denied.

The Taxpayers have the burden of showing the assessments were 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 prove the Properties were disproportionately assessed.

The Taxpayers argued the assessments were excessive because:

- (1) the Town was revalued in 1991 and the assessments were determined at that time;
- (2) in April 1992 the Properties were purchased for \$159,500;
- (3) after the purchase, the Town raised the assessments;
- (4) the lots are separated by a paved state road;

- (5) a comparable property (Loiselle) has been on the market for 3-4 years (currently listed for \$134,000); and
- (6) the assessments should remain as set in 1991.

The Town argued the assessments were proper because:

- (1) the Properties were originally on the market for \$168,000; an offer was made for \$159,000, and the Taxpayers counter-offered \$159,500; the original bidder then offered \$168,000, but the sellers chose to sell to the Taxpayers;
- (2) the Town is required by statute to look at sales each year and to adjust assessments that are not in line with other assessments in the Town;
- (3) the Town changed its methodology of valuing lots that are divided by a road to a method that values the properties as one lot with a market adjustment for the road (When the Taxpayers challenged this approach, the Town went back to assessing each lot separately.);
- (4) an analysis of sales supported a \$650 front-foot value;
- (5) the smaller lot received a 50% adjustment for being nonbuildable; and
- (6) the assessments were proper.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not show overassessment.

The board is required to consider a taxpayer's entire estate within a municipality. Appeal of Sunapee, 126 N.H. at 217. This rule has specific application to this case because the board must view both the waterfront lot and the back lot to determine whether the Taxpayers were disproportionately assessed. Additionally, municipalities must assess properties at their highest and best use. See RSA 75:1. Undoubtedly, the market would conclude Page

the Properties' highest and best use would be as a single unit even though the tax maps show two separate lots. The board would be wrong to consider the waterfront lot separate from the back lot or to consider the back lot separate from the waterfront lot. Therefore, the Town was correct to consider the combined highest and best use value of the lots.

To show overassessment, the Taxpayers were required to show that the Properties' \$125,600 equalized value ($\$151,950 \text{ total assessment} \div 1.21 \text{ equalization ratio}$) was excessive. The Taxpayers did not do this. The Taxpayers did not present any credible evidence of the Properties' fair market value. To carry their burden, the Taxpayers should have made a showing of the Properties' fair market value. This value would then have been compared to the Properties' assessment and the level of assessment 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 Properties' purchase price was \$159,500 in April 1992. While this is some evidence of the Properties' market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). However, where it is demonstrated that the sale was an arm's-length market sale, the sales price is one of the "best indicators of the property's value." Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988). The Town testified that the Properties had been on the market for \$168,000, and the sellers had received an earlier offer of \$159,000, which the Taxpayers then topped by \$500. Additionally, the Properties were on the market for approximately six months. Taken

Docket No.: 13966-93PT

indicate the Taxpayers' purchase price was representative of the Properties' market value. To the extent the Taxpayers argued the purchase price was excessive, the equalized assessment was \$125,600, which was substantially below the purchase price.

The Taxpayers' main complaint was that the assessments were increased since the 1991 revaluation. Increases from past assessments are not evidence that a taxpayer's property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985).

Moreover, the Town is required by RSA 75:8 to yearly review the assessments in the Town and the available market information and to then make any adjustments as needed. If the Town discovers that certain assessments were disproportional, whether higher or lower, the Town is required to adjust the assessments based on the market data. Such adjustments to assessments is not illegal spot assessing, but rather it shows the municipality is complying with RSA 75:8 and the New Hampshire Constitution, part 1, article 12 (every member to contribute his/her fair share of taxes), part 2 article 5 (assessments must be 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, 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 Page 5
Winslow v. Town of Rumney
Docket No.: 13966-93PT

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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Eugene C. and Gloria C. Winslow, Taxpayers; and Chairman, Selectmen of Rumney.

Date: June 13, 1996

Valerie B. Lanigan, Clerk

0006