

Judith L. Bangs

v.

Town of Rumney

Docket No.: 14262-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of: \$122,100 (land \$81,000; buildings \$41,100) on Lot 10, a 6.84-acre lot with a single-family house (the Property). The Taxpayer also owns but did not appeal the 1993 assessment of \$16,600 on Lot 10 SF, a .08-acre lot contiguous to Lot 10 (the Properties). The Taxpayer did not appear but was granted leave consistent with our Rule, TAX 202.06. This decision is based on the evidence presented to the board. The board also took official notice of the Town's presentation and exhibits in the Winslow v. Rumney, Docket No. 13966-93PT case, which was heard just before the Bangs appeal and which involved the same valuation issue. 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 203.09(a); 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) the Town was revalued in 1991, but the Town later increased the Property's assessment;
- (2) the two lots are separated by a paved state road and the lot on the west side of Stinson Lake Road had never been classified as shorefront property;
- (3) the land rises sharply up Carr Mountain, contains thick underbrush and trees and is unbuildable and has had no improvements since the 1991 revaluation; and
- (5) the assessment should remain as originally set at \$64,700.

The Town argued the assessment was proper because:

- (1) the sale of the Winslow property for \$159,500 in April 1992 was an arm's-length transaction, and the Town is required by statute to look at sales each year and adjust assessments that are not in line with the rest of the Town;
- (2) 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.);
- (3) an analysis of sales supported a \$650 front-foot value;
- (4) Lot 10 SF received a 50% adjustment for being nonbuildable; and
- (5) the assessments of both lots were proper.

Board's Rulings

Based on the evidence, the board finds the Taxpayer 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 Taxpayer was disproportionately assessed. Additionally, municipalities must assess properties at their highest and best use. See RSA 75:1. Undoubtedly, the market would conclude the Property's 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 Taxpayer were required to show that the Property's \$114,630 equalized value ($\$138,700$ total assessment \div 1.21 equalization ratio) was excessive. The Taxpayer did not do this. The Taxpayer did not present any credible evidence of the Property's fair market value. To carry their 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 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 one sale that was presented was the sale to the Winslows. The Winslows testified their properties' purchase price was \$159,500 in April 1992. While this is some evidence of the Winslow 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 Winslows' properties' had been on the market for \$168,000, and the sellers had received an earlier offer of \$159,000, which the Winslows then topped by \$500. Additionally, the Winslows' properties were on the market for approximately six months. Taken in total, these circumstances indicate the Winslows' purchase price was representative of the Winslow properties' market value. The Winslow sale supports the equalized assessment of the Taxpayer's Property.

The Taxpayer's main complaint was that the assessment was increased since the 1991 revaluation. Increases from past assessments are not evidence that a taxpayer's property is disproportionally 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 Page 5
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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 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

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Will J. Bangs, Agent for Judith L. Bangs, Taxpayer; and Chairman, Selectmen of Rumney.

Date: June 13, 1996

Valerie B. Lanigan, Clerk

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