James M. Knott Sr.

v.

Town of Sanbornton

Docket Nos.: 14280-93PT and 15109-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 and 1994 assessments of $16,000 on "Lot 11", a vacant, .72-acre lot; and $155,450 (land $70,100; buildings $85,350) on "Lot 12", a 27-acre lot with a house (the Properties). For the reasons stated below, the appeals for abatements are denied but the Town is ordered to use the revised assessment of $147,600 for each year.

The Taxpayer has the burden of showing the assessments were 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 prove the Property was disproportionately assessed.

The Taxpayer argued the lots are contiguous and should be treated as one lot. Further, the assessments are excessive because:

(1) in 1985, the tool shed was turned into a one-room camp (has heat and plumbing but no bedrooms) while the main house is being remodeled;

(2) the main house is uninhabitable and has a negative value;

(3) a comparison of assessments of neighboring properties supports the overassessment of the subject;

(4) the lot is steeply sloping, wet and could not be further developed; and

(5) the assessment should be approximately $73,500.

The Town agreed that Lot 12 should be merged with Lot 11 and recommended a revised assessment of $147,600 which is proper because:

(1) a comparison of front foot assessments of neighboring properties supports the assessment on the land;

(2) an inspection of the Property and the topographic map did not reveal wetlands;

(3) the house was assessed as an unfinished dwelling and adjustments were made for its poor condition;

(4) the shed was assessed in two sections: a 1-1/2 story dwelling on piers and the remainder as an attached shed;

(5) the barn value is consistent with similar properties in the area; and

(6) the neighboring properties are underassessed compared to their market values.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed. However, the board does agree that Lots 11 and 12 should be viewed as one property in estimating the market value based on its unity of use and proximity. See RSA 75:9. The board finds the Town's revised assessment of $147,600 is proper.

The Taxpayer did not present any credible evidence of the Property's fair 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 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 Taxpayer argued that the fair market value of the Property was immaterial because sufficient evidence was provided to support the overassessment of the Property based on the assessments of neighboring properties. The board disagrees with this assertion. First, assessments must be based on market value. See RSA 75:1. Due to market fluctuations, assessments may not always be at market value. A property's assessment, therefore, is not unfair simply because it exceeds the property's market value. The assessment on a specific property, however, must be proportional to the general level of assessment in the municipality. In this municipality, the 1993 and 1994 levels of assessment were 101% and 105% respectively as determined by the revenue department's equalization ratio. This means assessments generally were slightly higher than market value. The Property's equalized assessments were $146,150 for 1993 ($147,600 ÷ 1.01 equalization ratio) and $140,570 for 1994 ($147,600 ÷ 1.05 equalization ratio). These equalized assessments should provide an approximation of market value. To prove overassessment, the Taxpayer should have provided the board with sufficient evidence to show the Property was worth less than the $146,150 (1993) and $140,570 (1994) equalized values. Such a showing would indicate the Property was assessed higher than the general level of assessment. Second, the Taxpayer provided insufficient support to prove that the assessment of neighboring properties used as comparison were 1) similar to the

subject and 2) not underassessed. The Taxpayer suggested, as did the Town, that the comparable properties submitted by the Taxpayer may in fact be underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayer's Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayer's 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.

Third, the Taxpayer argued that the land value was disproportionate to the comparables. The board agreed, as indicated above, that the land should be assessed as a single parcel and the Town did recommend such an adjustment with resulted in a revised assessment. The Taxpayer was not satisfied with the revised assessment and further argued that adjustments should be made to the land value because the lot is wet and slopes to the east, west and north and is essentially non-buildable except for the buildings presently on the land. The Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982). The Town noted that most of the lots in the neighborhood are larger tracts of land and a comparison of the properties based on the front foot method indicated the land assessment was in

line with others in the area. Further, the Taxpayer's view is to the rear of the Property and the Junkins property (cited by the Taxpayer) has a view which looks over the Taxpayer's Property.

Further, the November 1978 survey provided by the Taxpayer shows more acreage than the Town is actually assessing the Property for (34.4 acres vs. 27.92 acres) with 898.6 feet of frontage vs. the Town's 877 feet. Neither party argued that the size determined by the Town was incorrect, however, the best evidence as to the size of a particular piece of land is a surveyor's calculations of the metes and bounds. When a survey is lacking, the best evidence is the Town tax map.

Lastly, without the photographs of the buildings submitted by the Town, the board would have simply had the assessment-record cards to review. In short, the burden is on the Taxpayer to provide sufficient evidence to support overassessment and the board finds the Taxpayer did not carry his burden. Upon questioning by the board, the Taxpayer indicated that the Property was insured for $180,000 yet continued to argue that the main house had a negative value.

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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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to James M. Knott, Sr., Taxpayer; and Chairman, Selectmen of Sanbornton.

Dated:March 12, 1995

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Valerie B. Lanigan, Clerk

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James M. Knott Sr.

v.

Town of Sanbornton

Docket Nos.: 14280-93PT and 15109-94PT

ORDER

This order responds to the Taxpayer's rehearing motion which is denied for the following reasons:

1) The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3.

2) The basis for proving disproportionality is covered in the board's rules and the statutes. The Taxpayer failed to prove the Property was disproportionately assessed when compared to the assessment of neighboring parties. Both the Town and the Taxpayer suggested that the comparables may be underassessed. As stated in the decision, the underassessment of other properties does not prove the overassessment of the Taxpayer's Property. Further, the courts have held in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just a comparison to a few other similar properties. See Appeal of Michael D. Canata, Jr., 129 N.H. 309, 401 (1987).

3) The board considered the evidence of the homeowners insurance to the

extent that it shows the inconsistency in the Taxpayer's argument of having insurance on a property that has no market value.

Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within 30 days of the date of the board's denial.

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 James M. Knott, Sr., Taxpayer; and Chairman, Selectmen of Sanbornton.

Date: April 23, 1996

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Valerie B. Lanigan, Clerk

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