

Maple Street Ski Club

v.

Town of Lincoln

Docket No.: 14619-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$296,500 on a .39-acre lot with a building used as a ski club (the Property). The Taxpayer also owns, but did not appeal, another lot in the Town with a \$15,500 assessment. 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 on the developed lot and ski club was excessive because:

- (1) the Property is the former Lincoln High School, which is now utilized as a ski club (mostly dorm space);
- (2) the Property's use is grandfathered, nonconforming and cannot be changed to another nonconforming use or expanded;

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- (3) an appraisal estimated the value by the cost approach to be \$205,000 as of April 1993;
- (4) the income approach was not applicable because it is a not-for-profit ski club; and
- (5) the per-square-foot selling price of the Lang Street School in Meredith in April 1994 supported the Taxpayer's estimated market value.

The Town argued the assessment was proper because:

- (1) the Town was revalued in 1993 by the department of revenue administration (DRA) and all sales were analyzed (No bank, foreclosure or distressed sales were used.);
- (2) the Taxpayer's land-value analysis was not correct, and land sales supported a site value of \$20,000 - \$22,000;
- (3) the functional and economic depreciation applied to the building by the Taxpayer was excessive; and
- (4) sales after the revaluation and the DRA ratio analysis supported the assessment.

Board's Rulings

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

This was a well-presented case by both sides. Ultimately, after all the evidence and arguments were submitted, this case required answering two questions: 1) was the assessment reasonable?; and 2) did the Taxpayer carry its burden of proof? The board answers the first question "yes" and the second question "no."

The Town adequately explained the basis for the assessment. The Town was reasonable in its calculation of the Property's assessment, especially considering the Property's uniqueness. Based on the board's experience and based on the evidence presented in this case, the board finds the assessment was reasonable.

The Taxpayer's experts certainly did a professional and competent job in reviewing the assessment and valuing the Property. However, the burden is on the Taxpayer to show overassessment, and the Taxpayer did not carry this burden. (Even if called a tie, the Taxpayer's appeal must be denied based on the burden of proof.)

Reviewing the Taxpayer's value estimate came down to two main issues:

- 1) were the Taxpayer's depreciation estimates reasonable and supportable; and
- 2) was the Taxpayer's land value estimate reasonable and supportable.

Concerning the Taxpayer's depreciation, the board concludes: a) no adjustment should have been made for external obsolescence; and b) the functional depreciation was excessive. The Property's highest and best use clearly is as a ski club. The building is well suited and adapted for this use, and the Property is in ski country. Additionally, the Property is rented out in the summer months to a theater group that is able to use the dorm rooms and the gym for summer theater.

Removing the 10% external obsolescence and reducing the functional depreciation (15% not 20% on the gym, and 5% not 10% on the remainder), the Taxpayer's valuation would be approximately \$293,000. This is almost exactly

the equalized assessment.

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Concerning the land values, the sales presented indicated a value of \$20,000 to \$22,000 for a residential lot. The Taxpayer used an \$18,500 land value.

One issue that neither party raised was whether even the \$20,000 to \$22,000 land value properly captured the value of the developed lot. The developed lot has a grandfathered use as a ski club, which is certainly a more intense use than a single-family residential use. This is especially true when considering the Property's proximity to ski areas.

Although well presented by the Taxpayer, the board finds the Taxpayer did not show overassessment, and the board find the Town was reasonable in assessing this Property.

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.

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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 R. William Gordon, Agent for Maple Street Ski Club, Taxpayer; Mary E. Pinkham-Langer, Agent for the Town of Lincoln; and Chairman, Selectmen of Lincoln.

Date: June 13, 1996

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Taxpayer's" rehearing motion, which is denied. The motion failed to establish the board's decision was erroneous in fact or law. See RSA 541:3.

The Taxpayer's motion focused on components of its analysis rather than on the property's total value, which the board found was reasonable. The Taxpayer's focus would require the board to accept all of the Taxpayer's other valuation components, which the board did not do in the decision and will not do now. In the decision for example, the board questioned whether the land values that were used by the "Town" and the Taxpayer were reflective of the property's true land value given the property's grandfathered intense use.

Motion denied.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I certify that copies of the within Order have this date been mailed, postage prepaid, to R. William Gordon, representative for the Taxpayer; Mary E. Pinkham-Langer, Department of Revenue Administration; and Chairman, Selectmen of Lincoln.

Date: August 2, 1996

Valerie B. Lanigan, Clerk

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