Miriam L. Snyder

v.

Town of Sunapee

Docket No.: 14716-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 adjusted assessment of $401,200 (building, $27,900; land, $373,300) consisting of .63 acres with a seasonal camp (the Property). The Taxpayer owns, but did not appeal, Map 17, Lot 2, consisting of land only with an assessment of $25,200. The Town and the Taxpayer waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. The Town recommended the assessment be revised to $380,000. For the reasons stated below, the board finds the Town's revised assessment of $380,000 to be reasonable and orders an abatement to that amount.

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) since the 1989 revaluation, the assessment increased from $43,330 to $433,300, more than doubling the taxes;

2) two neighbors sold their superior properties for less than the assessed values;

3) a 1989 appraisal indicated the Property had a market value of $300,000 and thus was assessed at 144% of market value and disproportionately to other properties in the Town; and

4) a proper 1993 assessment would be between $300,000 and $350,000 (land only), the cottage having little value, based on two neighbors' sales.

The Town recommended reducing the assessment to $380,000 to correct for assessing the view from the cottage rather than from the shore.

The Town argued the revised assessment was proper because:

1) the location of Taxpayer's cottage to the water makes it more valuable as it is a non-conforming grandfathered dwelling;

2) there had been no update/revaluation for 13 years; the 1989 reassessment took place around the peak of the housing boom with waterfront properties especially seeing a tremendous increase in value;

3) the assessment was determined based on qualified market sales; and

4) three comparables demonstrate a close range in value.

BOARD FINDINGS

The board finds the Town's recommended assessment of $380,000 to be reasonable, and the Taxpayer failed to present any credible evidence of the Property's fair market value.

The Taxpayer's 1989 Thompson appraisal, which estimated market value at $300,000, was found by the board in the Taxpayer's 1989 and 1990 appeals (Docket Nos.: 7919-89 and 10554-90) not to be an accurate estimate of market value. This appraisal was based on an assumption of the lot being more valuable if vacant. As discussed later, the board disagrees with this assumption and finds the cottage does contribute value. Also the board finds the Town submitted adequate sales data to support the revised assessment. The Town's three sales (two of which were also submitted by the Taxpayer) all sold for $450,000 to $455,000 in 1993 and 1994. The three comparables are in the same general neighborhood, and while they are generally improved with larger year round dwellings, they sold and are assessed for $50,000 to $100,000 more than the Property. The board finds this $50,000 to $100,000 difference is reasonable based on the difference in the improvements and consequently, the Taxpayer's assessment is reasonable and proportional to those sales. Further, the comparables indicate the land assessments were calculated similarly.

The Taxpayer argued the assessed values since the 1989 revaluation have varied without justification. The Town, however, in its brief stated the changes were due to a number of reasons including in 1991 town sewer becoming available, in 1992 the land value being reduced due to its rocky shore frontage and the cottage depreciation increased and in 1993 due to the Town performing an assessment update. The board finds these revisions are good faith adjustments in accordance with TAX 203.05 and based on factors that reasonably affect value.

The board finds, based on the Taxpayer's brief and photographs, that the

cottage is set back from the shore more than 50 feet and thus does not create a nonconforming "grandfather" right for new construction. However, the cottage

does provide a seasonal use of the Property and thus does contribute to its overall value. The Town's value for the cottage is nominal and reasonable.

Lastly, The Taxpayer complained about the high amount of taxes she must pay. The amount of property taxes paid by the Taxpayer was determined by two factors: 1) the Property's assessment; and 2) the municipality's budget and special assessments. See gen., International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor i.e., the board will decide if the Property was overassessed, resulting in the Taxpayer paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. at 217. The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See The Bretton Woods Company v. Carroll, 84 N.H. 428, 430-31 (1930) (abatement may be granted for disproportionality but not for issues relating to town expenditures); see also Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

If the taxes have been paid, the amount paid on the value in excess of $380,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1994 and 1995. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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

TAX 201.37. The reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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 reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration 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 that a copy of the foregoing decision has been mailed this date, postage prepaid, to Miriam L. Snyder, Taxpayer; and Chairman, Board of Selectmen.

Dated: January 19, 1996

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Melanie J. Ekstrom, Deputy Clerk