Clifford W. Bowman

v.

Town of Sunapee

Docket No.: 14808-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 adjusted assessment of $354,400 (land $304,400; buildings $50,000) on a .36-acre lot with a single-family house (the Property). For the reasons stated below, the appeal for abatement is granted to the Town's recommended assessment.

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 carried his burden.

The Taxpayer argued the assessment was excessive because:

(1) the valuation placed on the land is excessive based on comparisons of lots in Fishers Bay which adjoin the subject to the west;

(2) access to the Property is extremely difficult (the driveway exceeds a 15% grade) and the lot is subject to 2 rights-of-way which reduces the frontage to less than 100 feet;

(3) the Property had to be raised to prevent the brook from running over the land; and

(4) the Property is overassessed by at least $75,000.

The Town recommended revising the assessment to $318,800 to account for the large boulders in the water and septic concerns which were not originally considered. The Town argued the revised assessment was proper because:

(1) the condition factor has been reduced to account for the Property's access, the rights-of-ways and the rocky shore;

(2) three comparable sales in Town support a range of value between $300,000 and $325,000;

(3) Fishers Bay is a condominium development having its own beach and boat slips, the houses are built back from the road because most have steep access to the water, and a $70,000 amenity value is added to the average lot value of $165,000; the difference between the value of the Fishers Bay lots and the subject is in the private ownership;

(4) the Taxpayer has not provided any market evidence to support his value; and

(6) the recommended assessment is fair and proportionate.

Board's Rulings

The board finds the proper assessment to be $318,800. Upon review of the Town's recommendations, we find the adjustments suggested by the Town are appropriate based upon the evidence submitted. The board does not find any further adjustments are warranted for the following reasons.

1) The Town adjusted for the Property's rights-of-ways, access, septic concerns, rocky shore and rocky water. A review of the waterfront condition

factors utilized by the Town and the comparable sales data submitted supports the adjusted value.

2) The Taxpayer argued that his appeal was based solely on land values and compared his Property to the neighboring Fishers Bay properties. The Town argued that most of the lots in Fishers Bay, which are under condominium ownership, are steep to the water therefore the houses were built back closer to the road. The average lot value was $165,000 to which was added a $70,000 amenity value (the condominium development has its own beach and boat slips). Further, the difference between the value of the subject and the Fishers Bay properties are in the type of ownership, the subject enjoying private ownership. The "amenity" assessment is calculated by determining the replacement cost of the unit and subtracting the cost from sales prices. The remaining value is called the "amenity" value. This "amenity" value captures all tangible and intangible features of the unit and of the complex, including locus or situs desirability and marketability, common land, improvements such as roads, landscaping, lighting, parking, utilities, site work and if present, recreational facilities.

The Taxpayer did not submit the assessment-record cards for the Fishers Bay properties as required by board rule Tax 201.33 (f) (also cited in the hearing notice). In the market approach to value, using sales that are most comparable generally provides the best indicator of value. In this case, the subject has fee simple title to the Property and the Fishers Bay properties are subject to all of the conditions related to condominium ownership. There was insufficient evidence to support the Taxpayer's claim that his assessment was disproportionate when compared to the Fishers Bay properties.

3) The Taxpayer failed to present any credible evidence of the Property's fair market value. To carry his burden, the Taxpayers 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.

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

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George Twigg, III, Chairman

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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 Clifford W. Bowman, Taxpayer; and Chairman, Selectmen of Sunapee.

Dated:April 11, 1996

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Valerie B. Lanigan, Clerk

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