Henry and Gayle Pinkowski

v.

Town of Sunapee

Docket No.: 14865-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessments of $321,100 (land $263,700; buildings $57,400) on "Lot 22" a .18-acre lot with a single-family house and $31,600 on "Lot 37A" a 0.36-acre lot (the Property). The Taxpayers did not appear but were granted leave consistent with our Rule, TAX 202.06. This decision is based on the evidence presented to the board. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers carried their burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) an appraisal of both lots, with comparable sales, indicated a value of $275,000 as of May 1993;

(2) two neighborhood sales (Eldridge and Durham Corporation) support the overassessment of the subject;

(3) the house was built on piers in the 1900's, is seasonal, heated by electricity (first floor only), and has no insulation on the second floor and beneath the first floor;

(4) the topography of the waterfront lot is steep with a rocky waterfront, and both lots have rock ledge which detracts from future construction;

(5) the Property is located at the mouth of the harbor and the increased boat traffic has decreased the tranquility of the location, destroyed the dock and crib and weakened the boathouse support construction; also the boathouse, built around 1900, has rotted wood siding on the North exposure; and

(6) the Town's comparables are on the upper area of Lake Avenue where the view, location and sheltered water area command higher values.

The Town argued the assessment was proper because:

(1) the Taxpayers' appraisal was performed for refinancing purposes; this type of appraisal tends to run 20-25% low;

(2) in 1989 the second site was needed for septic development; however, Town water and sewer is now available and both lots are developable;

(3) the Taxpayers' appraiser used 2 sales of properties in another Town and did not make any adjustment for Lot 37A;

(4) the Taxpayers' two additional sales were not arm's-length transactions;

(5) the Property is located around the point from the harbor and the boat traffic has little influence on its value; and

(6) a comparable sales analysis indicated a range of values of $353,095 to $466,229.

Board's Rulings

Based on the evidence, we find the proper assessments to be:

Lot 22 - $308,800

Lot 37A - $31,600

The board has thoroughly reviewed all of the evidence submitted by the parties, specifically the Taxpayers' written statement, appraisal by Robert B. Hill (Hill), comparable sales (Eldridge and Durham Corporation), locational drawing, and the Town's testimony, report and photographs of the subject and the comparables. The board has based its decision on the evidence submitted and its judgment and experience.[1]

The board placed some weight on the Hill appraisal report; however, not a significant amount of weight was placed on Hill's comparable sales analysis for the following reasons:

1) the appraisal was prepared for financing purposes which in the board's experience can result in a conservative estimate of value due to the appraisal's purpose;

2) Hill did not make any adjustments for the value of the 2 lots of record nor did he discuss whether or not his estimate of value was based on a determination that Lot 37A was non-buildable;

[1] Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

3) Hill made no adjustments or gave any explanation for the lack of adjustments for the two of three comparable sales which were located in Newbury. While desirable to have comparables from the same town as the subject, there is no statute prohibiting use of out of town comparables as long as adequate adjustments are made, if warranted;

4) Hill deducted $75,000 from the value of comparable sales #2 for an extra ranch. No information was provided in the form of cost or market data to support the adjustment; and

5) Hill made numerous other adjustments without any explanation as to how they were derived.

The board also reviewed Hill's cost data and finds that the analysis of the improvements was reasonable. However, no land sales analysis was submitted to explain how the site value was determined and without an indication of Hill's determination of the highest and best use of each of the two lots, the site value indicated is of little help to the board. The board does note that the value determined by the cost approach is less than 5% difference from the board's determination of the combined assessed values of the two lots.

The Town challenged the arm's-length nature of the Eldridge and Durham Corporation sales. The board was given no evidence of the conditions of the sales or if the sales were verified through either the buyers/sellers/brokers to determine if they were in fact arm's-length. Because of this, the board has given the sales only some weight in its deliberations.

As with the Hill appraisal, the board did not place a great deal of weight on the Town's report for the following reasons:

1) the Town's comparables suggested an extremely wide range of indicated values for the subject - $353,095 to $431,137;

2) there was insufficient evidence submitted to support the differences from the sales to the subject in design, quality, age, condition; from the board's review of the assessment-record cards and photographs, it does not appear that the Town was comparing like properties;

3) there was insufficient evidence to support the location adjustments; and

4) a $30,000 adjustment for a boathouse in poor condition is excessive; the Town's reasoning that this is the amount used in the Hill appraisal does not make the number right and lacks supporting market data.

Lot 37A

The board finds that no evidence was submitted to support the fact that Lot 37A could not be separately sold. The evidence presented was that in 1989 this site was needed for septic development. However, water and sewer was available to this lot in April 1993 and it is the Town's understanding that Lot 37A is developable and can be separately deeded, and the board has no evidence to dispute their understanding. Further, no evidence was submitted as to the market value of this separate lot; therefore, the board has no basis for an adjustment to the assessment.

Lot 22

Based on all of the data submitted and the board's review, the board has

determined that an additional 10% condition adjustment (to 3.85) is appropriate to account for the steep access from the road, the ledgy lot and rocky waterfront. Further, upon review of the assessment-record cards submitted by the Town, the board finds the adjustments applied to the boathouse, deck (detached) and dock did not fully account for their condition. The Town did note on the assessment-record card that the "deck is rotted" "dock must be replaced"; however, the adjustments were no different than applied to other properties without notation. The board finds condition factors of .75 on the boathouse, .25 on the detached deck and .25 on the dock are appropriate. The assessments were calculated as follows:

LAND

# OF UNITS	TYPE	UNIT PRICE	CD	FACT.	COND.	VALUE
0.180	AC	$22,250	T	3.00	3.85	$257,000
TOTAL LAND						$257,000

EXTRA FEATURES

DESCRIPTION	UNITS	RATE	COND.	VALUE
Boathouse	672	16.80	0.75	$ 8,467
Fireplace 1-1	1	1500.00	1.00	$ 1,500
Garage	320	22.00	0.60	$ 4,224
Deck Detached	144	6.84	0.25	$ 246
Docks Private	405	25.00	0.25	$ 2,531
TOTAL EXTRA FEATURES				$17,000

LAND	$257,000
EXTRA FEATURES	17,000
BUILDING	34,800
TOTAl LOT 22	$308,800

If the taxes have been paid, the amount paid on the value in excess of

$308,800 for Lot 22 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 "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 Henry and Gayle Pinkowski, Taxpayers; and Chairman, Selectmen of Sunapee.

Dated:May 23, 1996

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Valerie B. Lanigan, Clerk

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