Bruce A. & Timothy D. Corrette

v.

Town of Lyme

Docket No.: 14868-93-PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessments of $66,800 on Map 421, Lot 3 and $9,100 on Map 421, Lot 13. The Taxpayers and the Town 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. For the reasons stated below, the appeal for abatement is denied. The board, however, notes that the Town in its February 7, 1995 letter actually adjusted the assessment on Map 421, Lot 3 to $54,400.

The Taxpayers have the burden of showing the assessments were 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 failed to carry this burden.

The Taxpayers argued the assessments were excessive because:

1) Lot 3 lacks water, sewer, and utilities and a leach field cannot be built on this lot;

2) Lot 3 is too close to the pond to be built upon under current zoning regulations;

3) comparable properties, with improvements, including septic systems and wells, were assessed at lower per-square-foot values;

4) Lot 3 should have been valued at $1.48 per-square-foot;

5) Lot 13 is too small to be built upon under current zoning regulations;

6) the Town has failed to determine the property's northern boundary;

7) the Town failed to respond to Taxpayers' appeal in a timely manner; and

8) the market value of both lots should be $26,000.

The Town recommended adjusting Lot 3's assessment to $54,400.

The Town argued the assessments, with the adjustment to Lot 3's assessment, were proper because:

1) Lot 3 is a grandfathered building lot and the existing structure can be further improved;

2) Lot 13 can be used for placement of a septic system for Lot 3's benefit;

3) the lots are smaller than adjacent lots and the Town assumes that smaller lots have a higher per-unit value for land and buildings;

4) Lot 13 was given a -75% adjustment as an unimproved, unbuildable, nonwaterfront lot;

5) Lot 3 was given a -25% adjustment for lack of septic system or well, a -15% adjustment for topography, and a -20% for its underimproved nature; and

6) the Taxpayers' comparables were unbuildable, while subject property was already improved.

BOARD FINDINGS

Based on the evidence, the board finds the Taxpayers did not show overassessment. However, the Town did reduce the assessment on Map 421, Lot 3 to $54,400. Therefore the total assessed value for tax years 1993 and 1994 is in the amount of $63,500 for Lot 3 and Lot 13.

Assessments must be based on market value. RSA 75:1. The Taxpayers did not present any credible evidence of the Property's fair market value. To carry their 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 assessments 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.

Based on the assessments, with Lot 3's assessment being reduced, the Taxpayers should have shown that the lots were worth less than $49,000 for Lot 3 and $8,200 for Lot 13. These values are based on the equalized assessments, which is calculated by dividing the assessments by the general level of assessment (1.11) as determined by the revenue department. In other words, the 1.11 equalization ratio indicates that assessments in the Town exceeded market value by approximately 11%. The Taxpayers did not introduce any evidence
to show that these equalized values were excessive, and thus the appeal must be denied.

The Taxpayers also argued the assessments were based on higher per-square-foot prices, which resulted in inequitable assessments. Differing square-foot assessment values are not necessarily probative evidence of inequitable or

disproportionate assessment. The market generally indicates higher per-square-foot prices for smaller lots than for larger lots. Because the yardstick for determining equitable taxation is market value (see RSA 75:1), it is necessary for assessments on a per-square-foot basis to reflect this market phenomenon.

The board notes that the Town should probably have assessed these lots as one property given their interdependence. (We also note that most municipalities have a merger ordinance under which two adjacent nonconforming lots that are in the same ownership merge into one lot.) The board also has questions about the correct lot sizes because of conflicting information about whether the assessment card was correct or the Taxpayers' information was correct. The assessment card indicated the lots were 5,663 square feet and 7,840 square feet, but the Taxpayers' brief indicated that the lots were 9,600 square feet and 15,000 square feet. Despite these two questions, the board did not find overassessment and leaves it up to the parties to address these concerns as they see fit.

While we have denied the appeal, the Town should have issued an abatement check, with interest, for tax years 1993 and 1994 based on their $54,400 adjusted assessment on Lot 3.

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, <u>not the date this decision is received</u>. RSA

541:3; 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.

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

_____
George Twigg, III, Chairman

_____
Ignatius MacLellan, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Bruce A. & Timothy D. Corrette, the Taxpayers; and the Chairman, Board of Selectmen.

Dated:September 15, 1995 _____
Melanie J. Ekstrom, Deputy Clerk

Bruce A. & Timothy D. Corrette

v.

Town of Lyme

Docket No.: 14868-93-PT

ORDER

This order relates to the "Taxpayers'" rehearing motion, which is denied. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3.

The Taxpayers provided the board with a "Town" letter that stated that the assessments exceeded market value. The board was aware of this and discussed this on page 3 paragraph 3 of the decision where we discussed the equalization ratio. Thus, the provided letter adds nothing to our analysis.

Concerning the problem with describing the property's boundaries, this does not warrant a rehearing because:

1) the Taxpayers did not present any information about what effect the title issue would have on the property's value;

2) the original material did not provide a sufficient basis for the board to conclude that a problem existed; and

3) the new information submitted with the rehearing motion cannot be considered because the board, under its rule TAX 201.37(e), does not consider new evidence or additional arguments that could have been presented for the board's

original consideration. While the proffered letter was dated June 1995, the Taxpayers certainly could have elaborated about the extent of the title issue in their original brief. Moreover, the board must focus on what information was available in 1993, and the Taxpayers could have provided us that information with the original brief.

For the above reasons and for the reasons in the decision, the board denies the rehearing motion.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
George Twigg, III, Chairman

_____
Ignatius MacLellan, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Bruce A. & Timothy D. Corrette, the Taxpayers; and the Chairman, Board of Selectmen.

Date: October 27, 1995

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Valerie B. Lanigan, Clerk

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