Philip and Elsie Traxler

v.

Town of Antrim

Docket No.: 15030-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of $56,900 (land, $42,300; building, $14,600) on a camp with .340 acres (the Property). 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 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 failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

1) it exceeded the general level of assessment of other property in the neighborhood;

2) the Property's use is restricted, i.e., half the Property is under the power lines and the lot has poor topography; and

3) a proper April 1, 1994 fair market value would have been $56,000.

The Town argued the assessment was proper because:

1) a base-acre price for lots on Franklin Pierce Lake of $75,000 was established in the 1993 revaluation;

2) reductions were given to address the Taxpayers' arguments about the power line and topography; and

3) similar lots were assessed proportionately with each other.

BOARD FINDINGS

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

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 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.

The Property was assessed at $56,900, but the Town's equalization ratio is 1.11, indicating that assessments in the Town generally exceeded market value. The Property's equalized assessment was $51,260 ($56,900 assessment ÷ 1.11 equalization ratio). To show overassessment, the Taxpayers should have shown that the Property was worth less than $51,260. Perhaps erroneously, the Taxpayers in their brief stated the Property was worth $56,000.

The Taxpayers argued their lot was assessed higher based on a per-acre analysis. Differing per-acre assessment values are not necessarily probative evidence of inequitable or disproportionate assessment. The market generally indicates higher per-acre 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-acre basis to reflect this market phenomenon.

The Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982). Additionally, the Town adjusted the Property's assessment for topography and the utility easement. Finally, the Town stated that the Property may have erroneously received a 20% downward adjustment for topography near the lake, which was given to most properties in this area due to topographical problems near the lake. The Town stated, and the photographs certainly showed, that the Property has very good topography near the lake. The lakefront area is the most valuable part of the Property.

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 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

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Ignatius MacLellan, Esq., 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 Philip and Elsie Traxler, Taxpayers; and Chairman, Selectmen of Antrim.

Date: June 13, 1996

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Valerie B. Lanigan, Clerk