Bruce, Beverly and Robert Arey

v.

Town of Belmont

Docket No.: 15213-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessments of: $22,890 (land $15,180; buildings $7,710) on Lot 30, a .13-acre lot with a two-car garage; and $12,720 on Lot 30-A, a vacant, .12-acre lot (the Properties). The Taxpayers also own, but did not appeal, another lot in the Town with a $115,890 assessment. 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 abatements is denied.

The Taxpayers have the burden of showing the assessments were disproportionately high or was unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show that the Properties' assessments were higher than the

general level of assessment in the municipality. Id. The Taxpayers failed to carry this burden.

The Taxpayers argued the assessments were excessive because:

(1) the Properties are accessed by a private dirt road and a railroad track abuts both lots;

(2) the lot line between the Properties is inaccurate, which has a negative impact on the Properties' marketability;

(3) the view of the lake across the street adds no value to the Properties due to the lack of beach rights;

(4) any construction will require a setback variance due to the Properties' narrow frontage;

(5) the Properties were purchased for $7,500 in 1993, and the sale price included a mobile home assessed at $2,500;

(6) three larger lots on paved Town roads, without the negative impact of the railroad tracks, had an average $16,126 assessment;

(7) comparable lots with more frontage and without railroad tracks sold for $8,000, $10,000 and $18,500; and

(8) a realtor estimated a June 1995 value of $6,000 for each lot if sold separately.

The Town argued the assessments were proper because:

(1) the Properties are located across a dirt road from a lakefront property

also owned by the Taxpayers;

(2) the Properties have access to Town sewer and are buildable;

(3) the assessments of comparable lots in the area supported the Properties' assessments;

(4) the Taxpayers did not show their entire estate in the Town, i.e., the appealed and nonappealed properties, was overassessed, and a 1994 sale of a nearby lake property raised the question of whether the Taxpayers' lake property was underassessed;

(5) the Taxpayers' comparables were not comparable in size, zoning or waterfront, and only comparable one was an arm's-length transaction;

(6) the Taxpayers' purchase of the Properties was not an arm's-length transaction because the sale occurred between relatives; and

(7) a row of trees separates the Properties from the railroad tracks, and the railroad line is used sparingly by a tourist company.

During deliberations, the board investigated two issues:

1) the Town's zoning ordinance concerning dimensional requirements and concerning merger of nonconforming contiguous lots; and

2) how the lots would be assessed if assessed together.

Based on this research the board found as follows. First, the Properties are both less than 1 acre and therefore, are nonconforming. See Zoning Ordinance Article V-Table 2. Second, the Town apparently does not automatically merge nonconforming lots. See Article IV-Section I. Third, the assessment recalculations performed by the board's review appraiser are

attached to this decision.

BOARD'S RULINGS

Based on the evidence, the board finds the Taxpayers did not show their entire estate was overassesssed, and therefore, the appeal is denied.

When a taxpayer owns multiple properties in a municipality, the taxpayer is required to show that its overall estate was overassessed. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The Taxpayers own three properties in the Town. Lot 30 and Lot 30-A abut each other, and Lot 22, the nonappealed property, is across a dirt road from Lot 30 and Lot 30-A. The Taxpayers only presented information on the appealed lots. The Town, however, questioned whether the Lot 22 was underassessed. In support of this, the Town submitted the January 1994 sale of Lot 26-11 a property similar to Lot 30. Lot 26-11 sold for $145,000.

While the board agrees with the Taxpayers that the Town may have overassessed Lot 30 and Lot 30-A, the board concludes the Taxpayers did not show their entire estate was overassessed. The Town probably should have assessed Lot 30 and Lot 30-A as one lot, which would have reduced the

assessments on Lot 30 and Lot 30-A by $12,000 (see Bartlett memorandum -- $27,900 - $15,900 = $12,000 -- total land assessment on Lot 30 and Lot 30-A as individually assessed minus calculated assessment for combined Lots 30 and 30-A). However, the board is required to review a taxpayer's entire estate in a town. In this case, looking at the entire estate raises two questions. First, was the nonappealed property underassessed? Second, would the highest value for all the lots be realized if sold as a "package"? Concerning the first issue, the Town's sale of a nearby and similar property was evidence

that the nonappealed property may have been underassessed. Concerning the second issue, the appealed Properties and the nonappealed property could be viewed as having a highest and best use as one integrated lot. The Taxpayers did not present any evidence on this point. They did assert the Properties lacked water access. The Taxpayers, however, own a waterfront lot across the street that could provide water access to the back lots by easement. This use may or may not maximize the value of the Taxpayers' lots. In conclusion, the Taxpayers' case fails because of their narrow focus on the appealed Properties.

Because the Taxpayers failed to show their entire estate was overassessed, the board must deny this appeal.

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. 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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Bruce, Beverly and Robert Arey, Taxpayers; and Chairman, Selectmen of Belmont.

Date: January 17, 1997

Valerie B. Lanigan, Clerk

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