Joseph Ricupero

v.

Town of Epsom

Docket No.: 15234-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 combined assessment of $210,200 on a 214.5-acre, 44-lot paper subdivision (the Property). (The Town recommended adjusting the combined assessment to $195,500. Town's brief, attachment C.) The Taxpayer also owns, but did not appeal, a vacant lot in the Town assessed at $18,500. The Taxpayer 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 granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or was unlawful, resulting in the Taxpayer 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).

The Taxpayer argued the total assessment was excessive because:

(1) the Property is part of an unimproved subdivision, and only one lot has road access;

(2) the Property cannot be sold as individual lots without roads or utilities;

(3) a realtor estimated a $99,900 value for the Property based on sales of comparable, unimproved subdivisions that had road access;

(4) comparable lots sold for less per acre than the Property's per-acre assessment;

(5) the assessment failed to recognize that the Town has an ordinance that limits building permits to a two permit per-year limit for each subdivision; and

(6) the Property had a $100,000 market value as of April 1, 1994.

The Town recommended reducing the total assessment to $195,500 to recognize the lack of paved roads and argued the total adjusted assessment was proper because:

(1) the Town approved the Property as individual lots;

(2) a comparable 21-lot paper subdivision in the Town had a $1,552 per-acre assessment and had an average $5,300 per-lot value, which were well within range of the Property's assessment;

(3) a comparable 47-lot paper subdivision in Hillsboro sold in May 1995 for $131,700 and is currently listed for sale at $199,000; and

(4) the Taxpayer's realtor's comparables were not comparable because the Deerfield and Loudon subdivisions, which sold for $75,000 and $136,000, lacked approvals, were on Town paved roads and were in current use.

The board's review appraiser inspected the Property, reviewed the property-assessment cards, reviewed the parties' briefs and filed a report

with the board, which was sent to the parties for their comments. This report concluded the proper value range for the assessment should be $119,400 to $153,000.

Note: The review appraiser's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the review appraiser's recommendation.

BOARD'S RULINGS

Based on the information presented to the board, the board finds the proper assessment to be $153,000. The board makes this finding for the following reasons.

1) While the burden of proof to show overassessment is on the Taxpayer, the Town has a preexisting duty to assess property based on its market value. See RSA 75:1; see also Appeal of City of Nashua 132 N.H. 261, 266 (1994) (municipalities have certain preexisting duties in assessing properties). To determine the proper value of a property, municipalities must consider all factors that affect market value. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). The Town, apparently, did not consider the effect of the Town's ordinance that placed substantial restrictions on the number of building permits that would be issued per year. Certainly, any prospective purchaser of the Property would consider the building-permit restrictions in valuing the Property. Not only does the restriction result in a limit of how many lots

can be built upon each year, but the ordinance would also have a chilling effect on an investor taking on the improvements necessary to create a subdivision such as building roads. We find, initially, that the Town failed to properly assess the Property.

2) The best evidence submitted to the board was Mr. Bartlett's report. We adopt Mr. Bartlett's second valuation approach, which valued the Property from a different highest-and-best-use assumption. See Bartlett's report, page 2, paragraph 2. His proffered approach seems reasonable given the lack of information concerning the effect of the building-permit-restriction ordinance. Mr. Bartlett considered all of the sales submitted by the parties, he reviewed the entire file, and he viewed the Property. He has presented a reasonable approach to valuing the Property, and his value opinion has not been influenced by any bias.

3) The board could not adopt the Taxpayer's asserted $100,000 because the Taxpayer did not submit sufficient information to support the value. The Taxpayer did, however, correctly raise the issue about the building-permit limitation and its effect on value.

4) Concerning some of the Town's arguments, the board makes the following comments. The Hillsboro sale does not provide a good comparable to the Property unless Hillsboro similarly has a building-permit restriction. Concerning the Hoit road parcel relied on by the Taxpayer's realtor, as indicated above, the board did not rely upon the realtor's opinion. Nonetheless, the Town indicated that the Hoit Road property had not received

any approvals, but the listing agreement shows it was an approved subdivision. Finally, in a May 12, 1997 letter, Attorney Soltani (from whom an appearance has not been received) referenced a sale on Lord's Mill Road in Epsom in June 1996. The board did not rely on this sale for several reasons most importantly the time difference between 1996 and 1994 and because no direct comparison was done by an appraiser concerning differences not only in market but type of property and stage of development.

If the taxes have been paid, the amount paid on the value in excess of $153,000 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 1995 and 1996. 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 "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 Joseph Ricupero, Taxpayer; and Chairman, Selectmen of Epsom.

Date: June 9, 1997

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Valerie B. Lanigan, Clerk

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v.

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ORDER

The board had its review appraiser review the file and the Property and his report is included with this order. (Additional addendum to the inspector's report, i.e., photos and assessment-record cards, are contained in the board's file.) If the parties have any comment to the report, they shall file those comments within 20 days of the clerk's date below. When the 20 days has run, the board will issue the decision.

The parties are also advised to see if the report can be used to resolve this appeal through settlement.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Valerie B. Lanigan, Clerk

CERTIFICATION

I hereby certify that the foregoing order has been mailed, postage prepaid to Joseph Ricupero, Taxpayer; and Chairman, Selectmen of Epsom.

Dated: April 23, 1997

Valerie B. Lanigan, Clerk