William and Donna Martin

v.

Town of Meredith

Docket No.: 15295-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 adjusted assessment of $95,200 on a vacant 7.28-acre lot (the Property). 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 their burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the Property is an undeveloped lot on Lake Wicwas, cannot be subdivided and has a right-of-way just behind the water frontage with wetlands behind the right-of-way (The right-of-way and wetlands effectively prevent locating a house on the waterfront.);

(2) the Property was purchased in an arm's-length transaction for $65,000 in November 1994; and

(3) the sale price is the best evidence of value, Appeal of Lakeshore Estates, 130 N.H. 504 (1988); therefore, the assessment should have been $71,500 ($65,000 X 1.10 equalization ratio).

The Town argued the assessment was proper because:

(1) the Town agreed that limited building can occur along the water frontage due to the right-of-way and the wet areas, but to maximize the view of the mountains and the lake, the most probable site to build a home would be on the higher land;

(2) there is potential for at least two lots along the road with a common beach; however, the assessment does not reflect the Property's subdivision potential;

(3) the Town considered the Property's topography, undeveloped state and accessibility, by reducing the base land value for those factors;

(4) the Taxpayers' purchase price was below market value when sales evidence of improved properties (adjusted for improvements and site value as unimproved) on the lake were considered; and

(5) the sales evidence supported the assessment.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not prove the assessment was disproportionate.

The Taxpayers' entire case was premised on their November 1994 $65,000 purchase price. The board reviewed the four supreme court cases on the weight to be accorded the sale price of a specific property. Appeal of Lakeshore Estates, 130 N.H. 504 (1988); Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980); Berthiaume v. City of Nashua, 118 N.H. 646, 648 (1978); Poorvu v.

City of Nashua, 118 N.H. 632, 633 (1978). Reading these cases together, the board concludes that a property's sale price is evidence of the property's value and can be one of the best indicators of the property's value provided the sale was a fair market sale. While a purchase price is strong evidence of a property's market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. at 329.

Market value is defined in The International Association of Assessing Officers, Property Appraisal and Assessment Administration 651 (1990) as follows:

> The most probable sale price of a property in terms of money in a competitive and open market, assuming that the buyer and seller are acting prudently and knowledgeably, allowing sufficient time for the sale, and assuming that the transaction is not affected by undue pressures.

The above definition assumes the sale was an arm's-length transaction, which is a "sale between two unrelated parties, both seeking to maximize their positions from the transaction." Id. at 633.

The board spent considerable time deliberating whether the Taxpayers' purchase price was consistent with the Property's market value. Based on our review of the above authorities and based on the board's own experience, the board concludes that while the transaction was an arm's-length transaction, the purchase price was not representative of the Property's market value.

We first note that the Taxpayers did not supply any other supporting documentation to show that their purchase price was consistent with other vacant land sales.

The Taxpayers' purchase can be distinguished from the purchase in Lakeshore

Estates. In Lakeshore Estates: 1) the buyers and sellers were experienced in the purchase and sale of real estate; 2) the parties were represented by attorneys; and 3) a real estate broker brought the parties together for the transaction. Based on these facts, the court concluded that "buyer and seller were zealously protecting their respective competitive interests in arm's-length negotiations rather than seeking to effectuate a mutually advantageous arrangement." 130 N.H. at 508. In the Taxpayers' situation, the board did not receive any information about the experience and knowledge of the sellers or buyers. Specifically, the board was told that the Taxpayers approached the buyers so the transaction could be negotiated and closed without the realtor who had listed the Property. Based on these two factors (no evidence of knowledgeability of buyers and sellers and no realtor), the board was unable to conclude that the buyers and sellers were knowledgeable about the real estate market generally. Additionally, to the extent the buyers and sellers may have been working to avoid paying the broker's fee, they were working towards a mutually advantageous arrangement rather than "zealously protecting their respective competitive interests." Compare Lakeshore Estates, 130 N.H. at 508.

The board is also uncertain whether the buyers and sellers were reasonably informed about the Property's highest and best use. Assessments must be based on market value, RSA 75:1, and this requires reasonable knowledge about a property's highest and best use. The Town testified that the Property has subdivision potential, and yet, the Taxpayers, as buyers, were unaware of this potential. This is a 7.28-acre lot with 279 front feet

on the water and 798 feet on the road. The Town stated the zoning and subdivision ordinances would allow at least two lots by using the water frontage as a common beach. Under such a scheme, the Town stated that only 100 feet of water frontage

would be required for the first lot with 25 or 50 feet required for each additional lot. The Town also would require that the lots be 150 feet wide with a minimum lot size of 40,000 square feet. (The minimum lot size varies based on slope and soil type.) Given the Property's features and given the uncontroverted testimony that buildings could not be located near the water frontage, a common beach arrangement with at least two lots may be the Property's highest and best use. Therefore, the board concludes the buyers and sellers in the November 1994 transaction may not have been reasonably informed about the Property's most valuable use.

The board is allowed to rely upon its experience and judgement in evaluating the evidence. RSA 541-A:33IV ("The agency's experience, technical competence and specialized knowledge may be utilized on the evaluation of the evidence."); Appeal of City of Nashua, 138 N.H 261, 265 (1994). It is the board's judgement that a 7.28 acre lot with 279 feet of water frontage and 798 feet of road frontage would be worth more than $65,000.

The board considered the Town's evidence concerning the three other Lake Wicwas sales, and those sales could be viewed as supporting the Property's assessment. However, the board, as did the Taxpayers, had some difficulties having confidence in the ultimate land values because the three sales were developed sales on smaller lots, and the houses on those lots were closer to the water than any house could be built on the Property.

In conclusion, while the Taxpayers' purchase price certainly is probative evidence, the board ultimately decided that the Taxpayers did not demonstrate that the price was representative of the Property's market value. 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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Ignatius MacLellan, Esq., Member

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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 Peter V. Millham, Esq., Counsel for William and Donna Martin, Taxpayers; and Chairman, Selectmen of Meredith.

Date: September 27, 1996

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Valerie B. Lanigan, Clerk

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