Barbara Hayden

v.

Town of Newfields

Docket No.: 16664-96LC

DECISION

The "Taxpayer" appeals, pursuant to RSA 79-A:10, the "Town's" October 1, 1996 land-use-change-tax (LUCT) bill of $14,280 on 4.67-acres used as a golf driving range (disqualified land) and part of a larger 44.8 lot. The LUCT was based on a $142,800 full-value assessment. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of proving the Town's LUCT assessment was erroneous or excessive. TAX 205.07. The Taxpayer carried this burden.

The Taxpayer argued the LUCT was excessive or erroneous because:

(1) the disqualified land is attached directly to the homestead and the only way to access the land is by way of the homestead driveway;

(2) five comparables indicate the assessment was disproportionate of current market values of land;

(3) there may be restrictions due to an aquifer protection zone;

(4) an appraisal was prepared in the fall of 1996 which indicated a market

value of the disqualified land to be $40,000; and

(5) the LUCT should be $4,000 based on a $40,000 market value.

The Town argued the LUCT was proper because:

(1) the Taxpayer has an existing driveway which accesses the house and an equipment sales building; therefore, the question of access is a non-issue;

(2) a comparable sale of a 2.32 acre tract for $75,000 supports the per acre value;

(3) a recent listing of two nearby lots indicates a value of $50,000 per acre; and

(4) the Taxpayer's comparables are all assessments, not sales, and the Taxpayer is using backland assessments which is of little assistance in determining market value.

The board's review appraiser inspected the property, reviewed the property's assessment-record card, reviewed the parties' briefs and filed a report with the board. The report was provided to the parties with ample time to respond and comment before the board's deliberations and decision. This report concluded the property's market value was $100,000. 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 evidence, the board finds the proper assessment for the disqualified land to be $110,000. Thus, applying the RSA 79-A:7 I rate of 10% results in a proper LUCT of $11,000.

There is no disagreement between the parties that a disqualifying change in land use has occurred and that the area disqualified from current use is 4.76 acres. The value of the disqualified land is the sole dispute.

The board is unable to give the Taxpayer's valuation testimony much weight. First, the comparables submitted by the Taxpayer were for assessments of other golf course properties in other towns. This evidence is not relevant to the determination of the Property's full and true value as required in

RSA 79-A:7 I. Further, the Taxpayer's mention of an appraisal of the disqualified land for $40,000 is given little weight because it was not submitted for review by either the Town or board, nor was the appraiser present at the hearing.

The board finds, as did the Town, the best evidence for estimating the disqualified land's market value was the sale of map 202, lot 8.21, a 2.32-acre lot for $75,000 in July, 1996. This sale provides an indicated price per acre of $32,327. Based on this sale, the Town used $30,000 per acre to arrive at the assessed value. While we find this sale is the best evidence, there are several differences between the sale and the disqualified land that need to be adjusted for. First, as the Taxpayer pointed out, the disqualified land is not subdivided from the larger tract and shares an existing drive with the house and equipment sales building to the south. The cost of subdivision (survey, legal, etc.) needs to be considered. Second, the sale contains 2.32

acres while the disqualified land is 4.76 acres, approximately twice the size. Generally, larger tracts of land sell for less on a per-acre basis than smaller tracts. Consequently, an adjustment needs to be made for the size difference.

Based on the board's experience and judgement[1] and a review of Mr. Bartlett's report, the board concludes a cumulative adjustment of 25% to 30% needs to be made to the indicated price per acre from the sale of lot 8.21 for the differences between the two properties. The range of value indicated by these two adjustments is $107,700 to $115,400 ($32,327 x .70 x 4.76 acres = $107,700; $32,327 x .75 x .4.76 acres = $115,400). Consequently, the board concludes that a reasonable estimate of the Property's market value is $110,000.

Lastly, the board reviewed and considered Mr. Bartlett's report but gives it little weight. While his value conclusion is not too dissimilar from the board's conclusion, the board finds some of the assumptions and calculations in his analysis are quite convoluted and, thus, produce questionable results.

If the LUCT has been paid, the amount paid on the value in excess of $110,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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[1] The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33 VI; Appeal of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

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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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this

date, postage prepaid, to Barbara Hayden, Taxpayer; and Chairman, Selectmen of Newfields.

Date: January 5, 1998

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Valerie B. Lanigan, Clerk

Barbara Hayden

v.

Town of Newfields

Docket No.: 16664-96LC

ORDER

This order responds to the "Taxpayer's" March 11, 1998 request for costs which the board denies.

The board's authority to assess costs is contained in two statutes:

1) RSA 76:17-b, which states, "(W)henever, after taxes have been paid, the board of tax and land appeals grants an abatement of taxes because of an incorrect tax assessment due to a clerical error, or a plain and clear error of fact, and not of interpretation, as determined by the board of tax and land appeals, the person receiving the abatement shall be reimbursed by the city or town treasurer for the filing fee paid under RSA 76:16-a, I."; and

2) RSA 71-B:9, in part, which states, "(c)osts may be taxed as in the superior court."

Analysis

Generally, the court and this board do not have the authority to award costs against a municipality in a tax abatement case unless there is a

specific statute authorizing such an assessment of costs. See Tau Chapter of Alpha XI Delta Fraternity v. Town of Durham, 112 N.H. 233, 235 (1978).

RSA 76:17-b

RSA 76:17-b does give the board specific authority to have the filing fee reimbursed by the Town if the tax assessment was due to a "clerical error or a plain and clear error of fact and not of interpretation as determined

by the board of tax and land appeals ***." In the present case, the board finds the reason for the eventual abatement by the board was not such a clerical error or a plain and clear error of fact, but was rather an issue that is subject to interpretation, namely, the market value of the driving range portion of the parcel. Therefore, the board declines to order the Town to reimburse the Taxpayer her filing fee.

RSA 71-B:9

In addition to RSA 71-B:9, TAX 201.39 allows the board to order the other party's costs to be paid when the board finds the matter was frivolously brought or defended. The board disagrees with the Taxpayer that this case was frivolously defended by the Town. It is clear from the testimony that there was significant disparity between the approaches and the value conclusions of the two sides. While the board did not find the Town's number correct, the board did find the market data and the general methodology relied upon by the Town to be more correct than that submitted to by the Taxpayer.

Lastly, even if the board were to find that the case had been frivolously defended by the Town, many of the costs being requested by the Taxpayer related to preparation of the appeal and not be allowed under TAX

201.39(d) ("costs for a party's expert witness shall be limited to those reasonable fees incurred for the witness' testimony, but no costs shall be awarded for the witnesses research or preparation in accordance with Fortin v. Manchester Housing Authority, 133 N.H. 154, 157-60 (1986)).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Barbara Hayden, Taxpayer; and Chairman, Selectmen of Newfields.

Date: March 23, 1998

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Valerie B. Lanigan, Clerk