Stephen W. and Eleanor S. White

v.

Town of Sunapee

Docket No.: 17763-98PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of $228,000 (land $80,400; buildings $147,600) on a .36-acre lot with a single-family home (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 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 Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the Property shares a narrow right-of-way to the lakefront with two other properties;

(2) there is a town culvert that empties onto the right-of-way;

(3) the shoreline is rocky with no beach area;

(4) no dock can be installed; and

(5) the Property's value as of the appeal date was approximately $200,000.

The Town argued the assessment was proper because:

(1) there was a sale of a nearby property in 1998 that supported the assessment; and

(2) the Property sold in April, 2000 for $280,000.

Subsequent to the hearing, the board, on its own, viewed the Property along with several comparable properties submitted by the Town at the hearing.

Board's Rulings

Based on the evidence and the board's view, the board finds the Taxpayers failed to prove the Property was disproportionately assessed. The Taxpayers argued the Property was not a lakeside property, the narrow right-of-way, shared with two other properties, was of limited use and a storm sewer line emits water directly onto the right-of-way. In valuing property, all real estate rights, tangible and intangible, are assessed:

> **RSA 21:21 Land; Real Estate.**
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> I. The words "land," "lands" or "real estate" shall include lands, tenements, and hereditaments, and all rights thereto and interests therein. (Emphasis added.)

While they vary from property to property, these ownership rights are often viewed as a "bundle of rights." "Ownership rights include the right to use real estate, to sell it, to lease it, to enter it, to give it away, or to choose to exercise all or none of these rights. The bundle of rights is often compared to a bundle of sticks, with each stick representing a distinct and separate right or interest." Appraisal Institute, The Appraisal of Real Estate 7 (11th Edition 1996). When

appraising a property that has no restrictions of rights (beyond being subject to taxation, eminent domain, police power and escheat), these rights are normally viewed collectively (as a bundle) and valued after a highest and best use analysis of the entire property.

The highest and best use must be one that is legally permissible, physically possible, and financially feasible. In most properties there are many factors that influence value and contribute to the determination of highest and best use. Such factors are nearly endless but commonly include influences, both internal and external, to the property such as location, size, utility, access, improvements, topography, view, and zoning. In this case, there is no doubt that the right-of-way access to the water, despite its deficiencies, adds to the market value of the Property.

While the Taxpayers argue the Property's April 1998 market value was $200,000 (indicating an assessed value of $196,000 [$200,000 x .98 Town 1998 equalization ratio]), two factors convince the board the market value was significantly higher:

1) the Taxpayers testified the Property was purchased for $125,000 (with its water access) in 1990 and improvements totaling $40,000 to $60,000 were made. The Taxpayers further testified that values on the lake have been soaring from 1991 to the present time, thus, their initial investment of $165,000 to $185,000 only increased in value, by the Taxpayers' estimation, approximately 7% to 17% in <u>seven</u> years' time; and

2) the Property was placed on the market six weeks prior to the hearing date and a sale was pending in the amount of $280,000 which would indicate (if the Taxpayers are correct that the market value in 1998 was $200,000) a 40% increase in value in two years. This evidence

suggests a greater value being placed on the water access than the Taxpayers attribute.

Lastly, the Taxpayers did not present any credible evidence of the Property's 1998 market value. To carry their burden, the Taxpayers should have made a showing of the Property's market value as of 1998. This value would then have been compared to the Property's assessment and the general level of assessment 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. 214, 217-18 (1985). The Taxpayers merely asked the board to look at the land value and compare it to other properties with water frontage or better water access. However, in making a decision on value, the board must look at the Property's value as a whole (i.e., as land and buildings together) because that is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. Id.

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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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Stephen W. and Eleanor S. White, Taxpayers; and Chairman, Board of Selectmen of Sunapee.

Date: June 2, 2000

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Lynn M. Wheeler, Clerk

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