

Gerald Wiggin and Leo LaVallee

v.

Town of Greenville

Docket No. 4320-88

DECISION

The Town and the Taxpayers failed to appear, but consistent with our rule, TAX 102.03(g), neither party was defaulted. This decision is based on the evidence presented to the board.

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1988 assessment of \$41,400 (land only) and \$98,600 (land, \$37,800; buildings, \$60,800) identified respectively as Map 1, Lot 21 and Map 1, Lot 21-1. Lot 21 consists of a parcel of unimproved land (4.92 acres) on Turnpike Road and Lot 21-1 consists of 1.1 acres improved with a manufactured home and a garage also on Turnpike Road (the Property). For the reasons stated below, the appeal for abatement is granted.

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 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved they were disproportionally taxed.

The Taxpayers stated on the Board's questionnaire, dated September of 1990, that Lot 21-1 had been on the market for the past nine months listed at the assessed value and that only one offer for \$80,000 had been received. The Taxpayers stated that they had spent over \$3,000 in survey and legal fees to date attempting unsuccessfully in causing Lot 21 to be subdivided from Lot 21-1.

The Town submitted only copies of the assessment record cards for the two parcels.

Based on the evidence, we find the correct assessment for Lot 21 should be \$24,850 and for Lot 21-1 to remain as assessed at \$98,600. The Board finds the Taxpayers did not meet their burden of proof on Lot 21-1. Their inability to sell the property for the assessed value in 1990, two years after the appeal date, is not conclusive evidence of disproportionality given the general downturn in the real estate market during that time.

As to Lot 21 however, while the Board finds some conflicting facts in the evidence supplied by the Taxpayer, certain facts, as 1) the subdivision plan requirements (plot dated July 2, 1977) that Lot 21 (the unimproved 4.92 acres) was to be annexed to Lot 21-1 and not sold or developed separately and 2) the 50 foot right-of-way to the abutting Gedenberg property, lead the Board to find that Lot 21 could not have been sold separately in 1988 and its value should be reduced by 40%. The conflicting facts of the different forms of ownership of the parcels by the Taxpayers (joint tenancy for Lot 21-1 and tenants in common for Lot 21) and the Taxpayers' attempt to sell Lot 21-1 separately in 1990 raise some questions about the deed and plot restrictions. However, on balance, the Board finds that in 1988 the lots were not severable and thus the abatement is warranted.

If the taxes have been paid, the amount paid on the total value of the two parcels in excess of \$123,450 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Member

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Michele E. LeBrun, Member

Date: June 13, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Gerald Wiggin & Leo LaVallee, taxpayers; and the Chairman, Selectmen of Greenville. Also, Scott Bartlett, Appraiser, M.M.C., Inc.

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Melanie J. Ekstrom, Deputy Clerk

Date: June 13, 1991

0009