

William N. Smith and Jacqueline L. Smith

v.

Town of Goffstown

Docket No. 4441-88

DECISION

A hearing in this appeal was held, as scheduled, on November 1, 1989. The Taxpayers represented themselves. The Town was represented by David W. Bolton of M.M.C., Inc. and Ronald Mace, Town Assessor.

The Taxpayer appeals, pursuant to RSA 76:16-a, the assessment of \$113,100 placed on their real estate, located on 48-1 Gorham Pond Road (Map 7, Block 58, Lot 2-1) for the 1988 tax year. The property is one of six condominiums all of which are located on approximately seven acres of land. A value of \$30,000 was attributed to the common land and amenities.

Neither party challenged the Department of Revenue Administration's equalization ratio of 100% for the 1988 tax year for the Town of Goffstown. Based on that ratio the Taxpayers' assessment equates to a market value of \$113,100.

The Taxpayers argued they were overassessed based on the purchase price of the subject property which they alleged was its market value as of April 1, 1988. The Taxpayers stated they paid \$99,900 for the property in February of 1988 after looking at property for eight to nine months. They said the property had been on the market for about one year and the asking price had been \$99,900 for eight months.

The Town's position was the value was based on the sales in the condominium development not just on the sale of the subject property. The Town presented evidence showing that the square foot assessed value was \$77.22 for the 1,128 square foot condominiums, \$75.46 for the 1,300 square foot

condominium and \$69.30

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for the 1,632 square foot condominium (the subject). The corresponding sales prices ranged from \$75.27 to \$77.04 for the 1,128 square foot condominiums and were \$73 and \$61.21 for the 1,300 and 1,632 square foot condominiums respectively. The Town argued the subject sale was an aberration it being one of the last condominiums sold and it having no appliances.

The Town agreed with the Taxpayers that their basement was 661 square feet not 816 square feet and recommended a reduction of \$1,395 for the smaller size.

The Board rules as follows.

The Taxpayer's appeal is based on the Constitution of New Hampshire, Part 2, Article 5, which states in part:

And further, full power and authority are hereby given and granted to the said general court, from time to time, . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state; and upon all estates within the same

and RSA 75:1 (supp.) which states:

Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the assessed value of all other taxable estate bears to its true value. Boston & Maine R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450." Bemis v. Claremont, 98 N.H. 446, 452 (1954).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976),

Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of

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Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H. 187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

Since the equalization ratio of 100% is not in dispute the Taxpayers need to establish the market value of their property is less than \$113,100.

Unless it is found on the evidence that the sale of the subject property was not consummated in a fair market, the sale price stands as evidence of its value. Poorvu v. Nashua, 118 N.H. 632, 633 (1978). Although the sale price of property is quite relevant to the issue of its value (cite omitted), it is but one element to consider in arriving at a just valuation for tax purposes. (cites omitted.) Appeal of Anderson, 120 N.H. 750, 751 (1980).

The Board finds as follows. The assessment is properly reduced by \$1,395 to reflect the 661 square foot area of the basement to which the Taxpayers have exclusive use. The sale of the subject property was an arm's length transaction therefore the Board gives it substantial, but not total, weight. The subject property was the largest in the development and was different from the other five condominiums due to its age and prior use. An addition depreciation of 10% to the depreciated building value of \$82,400 is warranted.

For the above stated reasons the Board rules that the proper assessment for the 1988 tax year is: \$103,460.

If the taxes have been paid, the amount paid on the value in excess of \$103,460 is to be refunded with interest at six percent per annum from date of payment to date of refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Anne S. Richmond, Esq., Chairman

(Mr. Twigg did not sit.)
George Twigg, III, Member

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Peter J. Donahue, Member

Paul B. Franklin, Member

Date: November 9, 1989

I certify that copies of the within Decision have been mailed this date, postage prepaid, to William N. & Jacqueline L. Smith, taxpayers; and the Chairman, Selectmen of Goffstown.

Michele E. LeBrun, Clerk

Date: November 9, 1989

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