Michael C. Burnett
v.
Town of Greenland

Docket No. 4552-88

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1988 assessments on the following five properties:

8 Spring Hill	Land	$ 70,000
	Buildings	$125,400
	Total	$195,400
34 Palm Drive	Land	$ 73,400
	Buildings	$165,700
	Total	$239,100
36 Palm Drive	Land	$ 73,500
	Buildings	$156,000
	Total	$229,500
40 Palm Drive	Land	$ 73,700
	Buildings	$127,400
	Total	$201,100
41 Palm Drive	Land	$ 72,900
	Buildings	$143,500
	Total	$216,400

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 216 (1985). We find the Taxpayer carried

this burden on the Palm Dive properties but failed to carry it on the Spring Hill property.

Palm Drive Properties

The assessments for the Palm Drive properties were based on the town-wide, 1987 revaluation. For the 1987 tax year, the Taxpayer appealed the assessments on the Palm Drive properties, and this board ordered the Town to reduce the land component by $10,000 each. Burnett v. Greenland, Docket No. 3813-87. The board made its decision because "the land assessment on the four appealed properties was based on comparables which were not properly adjusted to reflect the location of the subject properties." Decision at 3.

Despite the board's 1987 decision, the Town added the $10,000 back to the land component for the 1988 tax year. The Town stated they added the $10,000 back because it disagreed with the board's 1987 decision and because the Town did not think it was properly represented at the 1987 appeal.

The board, as trier of fact, is empowered to give the weight it deems appropriate to the 1987 decision. See Appeal of Public Service Company of New Hampshire, 120 N.H. 830,833 (1980). Based on the parties presentations at the hearing on this 1988 appeal and given the board's 1987 decision, the board concludes the land values for the Palm Drive properties should be reduced by $10,000. The evidence again established the land values on the Palm Drive properties were high, warranting adjustments to bring the land values in line with other land values. We also note the equalization ration was 100% for both 1987 and 1988. Finally, the Town testified it added the $10,000 back to

the assessments solely because it disagreed with the board's 1987 decision. In other words, the increased assessments were made not for any reason that was linked to changes in the Palm Drive properties or to the level of assessment throughout the Town.

Spring Hill Property

Concerning the Spring Hill property, we find the Taxpayer failed to carry his burden of showing this property was disproportionately assessed.

Conclusion

If taxes have been paid, the amount paid on the value in excess of $1,041,500 (the appealed assessments less the $10,000 on each lot, plus the Spring Hill property) shall be refunded to the Taxpayer with interest at six percent per annum from the date paid to the date refunded.

The board may award costs as in the superior court, RSA 71-B:9; TAX 201.05(c), and the board is mandated by RSA 76:17-a to refund the filing fee when the board grants an appeal for plain error. Based on the facts in this appeal, including the Town's failure to have a valid reason for adding the $10,000 back to the land component, the board awards the following costs: $40 for the filing fee and $15.98 for mileage, totalling $55.98. The Town shall pay the Taxpayer these ordered costs and fees with the tax refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

March 19, 1991

George Twigg, III, Chairman

Peter J. Donahue

Ignatius MacLellan

I certify that copies of the within decision have been mailed this date, postage prepaid, to Michael C. Burnett, the Taxpayer, and to the Chairman, Board of Selectmen, Town of Greenland.

Michele E. LeBrun, Clerk

March 19, 1991

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