

Gerald L. Prud'Homme and Barbara A. Prud'Homme
v.
Town of Gilford

Docket No. 5516-88

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1988 assessment of \$238,500 (land, \$47,000; buildings, \$191,500) on their real estate at 45 Hillside Driver consisting of a dwelling, attached garage and swimming pool on an 8.33 acre lot.

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 argued 1) that the property was overassessed based on the equalized value determined by the comparative sales approach in their "assessment evaluation" (TP-1 exhibit) and 2) that the actual land and construction costs, as of April of 1987, of \$207,200 further supports their contention of inequitable assessment.

The Town argued that 1) the Taxpayers' property was unique in design, construction and views; 2) that Taxpayers' comparable sale #2 did not enjoy as good of a view or neighborhood; 3) that sale #3 had substantial defects in the retaining wall for the swimming pool and that the sale price was agreed to one year prior to the actual closing; and 4) that the Taxpayer's construction contract was signed in May of 1986.

The Town presented convincing arguments as to the less than probative value of the majority of the Taxpayers' comparables. Further, the Board finds the Taxpayers' building block method of adding together the land and building

costs

does not adequately account for the synergy the market often recognizes in the assemblage of a property's components. This synergy results from the removal of risk and inconvenience by completed construction and the unique design of a house complementing the views and amenities of a good site. Further, the Taxpayers' analysis of the cost approach does not adequately account for the rapid appreciation of property from 1986 and 1988 as testified to by the Town and evidenced by the drop in the Town's equalization ratio from 100% in 1986 to 63% in 1988.

In deciding this appeal we note two principles that the board operates under. First, in deciding whether the taxpayers have carried their burden, by necessity we review the various valuations being presented by the parties. Even though this is an important part of our analysis, the board is not obligated to or empowered to establish a fair market value for an appealed property. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 733 (1980). Rather, we must determine, using the parties' valuations, whether the appealed assessment has resulted in the taxpayers paying an unfair share of taxes. See Id. Second, in reviewing an ultimately in deciding upon a proper assessment, the board, just like the municipalities and taxpayers, does not arrive at an assessment by way of a precise science. Rather, valuing properties is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979).

However, errors in an assessment are a basis for an abatement if the overall valuation is excessive.

If the appellants established the fact that their tax for the year . . . was excessive, they were entitled to a repayment or abatement of the excess tax, according as they had or had not paid it. They could have shown that the tax was excessive in various ways. If the whole or a part of the property taxed to them was exempt from taxation, they could have shown that their tax was excessive by proof that the whole or a part of their property was exempt. If they did not own the whole or a part of the property taxed to them, they could have shown the same fact by proof that they did not own any property in the taxing district, or a less quantity than was taxed to them. If their property was correctly appraised, they could have shown that their tax was excessive by proof that a greater valuation than that

assessed upon it or too large a rate was made use of in computing the tax, or that some mathematical error occurred in the computation. And if the ratio between the true and assessed value of all other property in the taxing district, this might have constituted the evidence from which it could have been found the their tax was excessive. The proof of any one of these facts would not have been the issue upon which the appeal proceeded, but evidentiary facts from which the ultimate fact or issue could have been found; Winnipiseogee Etc. Co. v. Laconia, 74 N.H. 82, 83-84 (1906).

The Board finds that the Town's assessment of the house calculates the ground floor area as being all finished and of the same quality as the main living area. The Taxpayer testified that only 1100 to 1200 square feet of the ground level is finished and of material slightly below the grade of the main floor. Therefore the Board rules that the dwelling should be adjusted by 5% functional depreciation to arrive at a proper assessment of \$229,500 (land, \$47,000; buildings, \$182,500).

If the taxes have been paid, the amount paid on the value in excess of \$229,500 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Peter J. Donahue, Member

Paul B. Franklin, Member

Ignatius MacLellan, Member

Date: January 15, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Gerry Prud'Homme, representative form himself and Barbara A. Prud'Homme, taxpayers; and the Chairman, Selectmen of Gilford.

Michele E. LeBrun, Clerk

Date: January 15, 1991

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