

Gowdy Family Limited Partnership/Curt Gowdy

v.

Town of Bethlehem

Docket No.: 10095-90

DECISION

The "Taxpayer" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessments of \$565,300 (land \$511,950; buildings \$53,350) on Lot 25, a 240-acre lot with a house, shed and barn; and \$1,075,500 (land \$686,750; buildings \$388,750) on Lot 18, a 252-acre lot with a house (the Properties). For the reasons stated below, the appeal for abatements is granted in a limited fashion.

While the Taxpayer did not generally fulfill its burden, the board grants an abatement based on some minor errors in the assessment relative to the building on Lot 18.

The Taxpayer argued the assessments were excessive for both lots because:

(1) appraisals performed by James C. Walker, President of White Mountain Appraisals, Inc., estimated the value of the building and two acres on Lot 18 to be 63% of the Town's assessed value and for Lot 25 for the building and 29.78 acres to be 55% of the Town's assessment; and

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(2) the Town's replacement cost and assessed value for the improvements on Lot 18 are far in excess of that estimated by the Taxpayer's appraisal.

The Town argued the assessments were proper because:

(1) the buildings were consistently reviewed and graded based on quality of construction and materials and were supported by several sales submitted by the Town;

(2) Lot 18 enjoys views of the White Mountains and the main dwelling is accessed by a long paved driveway lined with maple trees providing an estate setting; and

(3) the quality grade of the main dwelling on Lot 18 is classified as a 6; while possibly the grade is excessive based on an exterior view, it is generally supported by the grading of other dwellings during the reassessment in 1988.

Board's Rulings

First, the board must express its dismay at the Taxpayer's appraiser not being present at the hearing despite the hearing notice indicating that the appraisers for both parties shall be present for questioning by the board.

This case was, at the request of the parties, originally processed under the board's expedited procedure whereby the parties submitted their arguments in brief form. Following the board's deliberation of the written briefs, it was determined that a hearing was needed to answer specific questions about

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the Property. The board scheduled a hearing for May 28, 1993 which was continued as a result of a request by the Town. The hearing was rescheduled for July 23, 1993 which was also continued as a result of a request by the Taxpayer due to a death in the family of the Taxpayer's appraiser. The hearing was rescheduled a third time for October 12, 1993 which was held and the Taxpayer's appraiser was not present. Upon questioning, the Taxpayer's attorney, A. John Mazella, described the communications that he had had with the appraiser. Based on that testimony, it appears as if Attorney Mazella acted with due diligence and effort in trying to comply with the board's order to have the appraiser present. In fact it appears as if one of the Taxpayer's partners, Curt Gowdy, also attempted to have the appraiser present at the hearing.

As will be seen in the following findings by the board, it was the appraiser's incorrect assumptions that formed the major basis for the Taxpayer not fulfilling its burden of proof. While having the appraiser present may not have resurrected and cured those original incorrect assumptions, it would have allowed the board to have more evidence as to the condition and quality of the Property and any market information the appraiser may have been generally knowledgeable of in the Bethlehem area.

The board discussed the possibility of assessing some form of costs against the appraiser for not complying with the board's hearing notice.

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However since the notice was not specifically sent to the appraiser the board declines to pursue that avenue. It, however, does not diminish, the board's dismay in the appraiser not fulfilling his professional obligations to both his client and to the board.

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The board finds the evidence submitted by the Taxpayer to be inconclusive primarily because the appraisals done by Mr. Walker viewed only the improvements on a small portion of the land rather than viewing the entire estate of the Taxpayer. Further, as it relates to Lot 25, the Taxpayer's appraiser made incorrect assumptions that the Town had assessed a lot of 29.87 acres with buildings; rather in keeping with the Town's methodology, the 29.87 acres is the area of the frontage associated with the 240 acres of that parcel. The board is required to look at the entire estate of a taxpayer not just individual or specific components of the estate in determining whether the taxpayer is disproportionately assessed. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985); See also Bemis Bro. Bag Co. v. Claremont, 98 N.H. 446, 451 (1954); Amoskeage Manufacturing Co. v. Manchester, 70 N.H. 200 (1899).

Further, relative to Lot 18, the board finds Mr. Walker's appraisal of little probative value because of the magnitude of the adjustments in the market approach. The three comparables selected by Mr. Walker sold in the \$169,000 to \$187,000 range yet his conclusions of value were approximately \$100,000 in excess of those sales. Such adjustments indicate that the properties are indeed not comparable to the Property. Mr. Walker's replacement cost estimates for improvements on Lot 18 also are given little weight. As testified to by the Town, the replacement cost per square foot is

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excessively low given the good quality of the buildings and their condition.

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The board does find, however, in reviewing all the evidence and upon the questioning of Attorney Mazella and the Town's appraiser, the Town's class 6 grade for this dwelling overstates the value of the building for several reasons:

- (a) what the Town describes as a full second story is something less than that due to the slanting kneewalls not being fully compensated for by the dormers;
- (b) the Property has not had any renovations for at least forty years and contains kitchen improvements, bathrooms, heating systems etc. of an earlier period that would exhibit functional obsolescence in the 1990 market; and
- (c) the grade of the building and the condition listed as excellent appear to be somewhat optimistic based on the testimony of both the Town's appraiser and Attorney Mazella.

Therefore the board finds that the depreciation of the main residence should be increased from 10 physical and 15 functional to 15 physical and 20 functional reducing the assessed value with the buildings on Lot 18 to \$347,550.

In summary the board finds the proper assessments to be: Lot 18 \$1,034,300 (land \$686,750; buildings \$347,550) and Lot 25 \$565,300 (land \$511,950; buildings \$53,350).

If the taxes have been paid, the amount paid on the value in excess of

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the amount stated above shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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The board rules on the Taxpayer's request for findings and fact as follows:

- (1) grant
- (2) grant
- (3) grant
- (4) deny
- (5) grant
- (6) grant
- (7) deny
- (8) deny
- (9) deny
- (10) deny
- (11) deny

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to A. John Mazella, Esq., Attorney for Gowdy Family Limited Partnership/Curt Gowdy, Taxpayer; and Chairman, Selectmen of Bethlehem.

Dated: November 11, 1993

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Valerie B. Lanigan, Clerk