

Leo and Marion Corriveau

v.

Town of Gilmanton

Docket No.: 10896-90PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessments of:

\$56,600 on Lot 4, a 41-acre lot with a 1-acre house lot not in current use, and 40 acres in current use; and

\$162,588 on Lot 5, a 94-acre lot with a 1-acre house lot not in current use, and 93 acres in current use (the Properties).

For the reasons stated below, the appeal for abatements is granted to the Town's recommended assessments.

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

The Taxpayers argued the assessment on Lot 4 was excessive because:

- (1) the Town erroneously called the building a cottage when it has no heat, water and is not livable and is used for storage; and
- (2) the barn was overassessed especially given the condition of the back wall.

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The Taxpayers argued the assessment on Lot 5 was excessive because:

- (1) the assessment increased from the 1981 assessment;
- (2) the Town erroneously stated the house had nice hardwood floors when the floors are only wide-pine boards;
- (3) the Town erroneously stated the house was built in 1820 when it was built in 1840;
- (4) the house has other deficiencies, including having only one bathroom and requiring basement entry from the outside; and
- (5) the house was remodeled not renovated.

The Town argued the assessment on Lot 4 was proper because:

- (1) it was arrived at consistent with the assessments on comparable properties;
- (2) the cottage has more finish and utility than a storage building;
- (3) abatements were given after review of the property;
- (4) a further -\$9,500 adjustment should be given the barn due to its condition; and
- (5) the adjusted assessment (\$47,200) would be within a fair range of values in the Town.

The Town argued the assessment on Lot 5 was proper because:

- (1) the hardwood floors were assessed to the Lot 4 cottage and this house was assessed as having pine floors;
- (2) a further -\$27,800 adjustment was warranted due to additional depreciation of the house; and
- (3) the adjusted assessment (\$134,800) would be within a fair range of the antique house sales in the Town.

The Taxpayers were not satisfied with the recommended assessments.

Board's Rulings

Based on the evidence, we find the Town's recommended adjustments to be the appropriate assessments--Lot 4 \$47,200 and Lot 5 \$134,800. We find the Taxpayers failed to prove any further adjustments were warranted. The Town took reasonable steps to review the assessments and to make reasonable adjustments thereon.

Concerning the Taxpayers' arguments, we note the following.

Lot 4

1) The board's concern is whether properties, as a whole, have been proportionally assessed. Whether a town calls a building a shed or a cottage is of no consequence provided the value placed on the building and the property as a whole is not excessive. The Taxpayers failed to show the "cottage" was overvalued, and the board does not find the value to be excessive.

2) The board does not find the barn was overvalued.

Lot 5

1) Concerning the Taxpayers' arguments about the assessment increases, increases from past assessments are not evidence that a taxpayer's property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985).

2) The assessment card had the flooring properly listed as pine.

3) Even if the Town had the wrong year built on the card, the value on the building appears reasonable given the house's condition.. "Justice does not require

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the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

Finally, the Taxpayers did not present any credible evidence of the Properties' fair market values. To carry their burden, the Taxpayers should have made a showing of the Properties' market values. These values would then have been compared to the assessments and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

If the taxes have been paid, the amount paid on the value in excess of \$47,200 on Lot 4 and \$134,800 on Lot 5 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1991, 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and

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arguments submitted to the board, the board's decision was erroneous in fact or law.

Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Leo and Marion Corriveau, Taxpayers; and Chairman, Selectmen of Gilmanton.

Dated: June 30, 1994

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Valerie B. Lanigan, Clerk