Lesley E. Shearer

v.

Town of Gilmanton

Docket No.: 10899-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of $233,300 (land, $110,100; buildings, $123,200) on 53-acres with house, guest house, sheds, and barns (the Property). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the assessed value increased 4.46 times from 1989 to 1990;

(2) the value of the house is too high considering the condition and

improvements needed;

(3) the guest house has no bathroom, plumbing, insulation, its wiring is old and inadequate, the basement has a dirt floor, etc.;

(4) the barn is listed as two structures; yet, it is only one building and is in need of major structural repairs; and

(6) the Property consists of 48.28 acres not 53 based on a surveyor's calculation of a recorded map.

The Town argued the assessment was proper because:

(1) the Taxpayer has not provided a proper and accurate survey; therefore, no further adjustments are warranted to the land;

(2) a comparison of similar aged homes demonstrates the Taxpayer's Property is within established parameters; therefore, no further adjustments are warranted;

(3) an inspection of the guest house found the building to be partially complete similar to a cottage;

(4) the value of the guest house is reasonable considering its current utility as a recreational/bunkhouse structure;

(5) an inspection of the barn found the building to be structurally sound with normal wear and tear for the age and has been assessed according to its present utility;

(6) the Taxpayer indicates the sheds "have no current use and are waiting to be torn down," yet two years have gone by and they are still standing; and

(7) the methodology used throughout the Town was fair and equitable.

The board's inspector reviewed the file, and filed a report with the board (copy enclosed). This report concluded the proper assessment should be $198,650 (land, $110,100; buildings, $88,550), due to the Property's condition

and utility of the improvements needed.

The board gives the inspector's report some weight to the extent it is supported by the evidence submitted by the parties.

Board's Findings

Based on the evidence, we find the proper assessment should be $198,950 (land, $104,100; buildings, $94,850). This assessment is ordered for the following reasons:

Land

The best evidence as to the size of the land is the Taxpayer's surveyor's calculations of the metes and bounds plan. While this description may not be as exact as a new survey based on current technologies, it is the best evidence available of the land as of the assessment date. The Town submitted no evidence as to the basis of the 53-acres used in the assessment. It is unreasonable for the Town to demand a taxpayer obtain a new survey when a reasonable metes and bounds plan exists and where apparently the Town does not have any better evidence to support its 53-acre contention. Therefore, the land valuation should be based on 48.28-acres (until a more definitive survey is made) and reduced to $104,100.

Buildings

The board finds the Taxpayer's description and photographs support the board's inspector's report that additional depreciation for the condition and

utility of the improvements needs to be made. The board finds the inspector's report, for the most part, is the best evidence as to the effect of those conditions on the building components of the Property's market value. The

board finds, different from the inspector's report, that the cottage value of $12,650 is reasonable for its present utility and future potential for additional living area after improvements. Therefore the board finds the proper assessment for the buildings to be $94,850.

The board must comment on the Town's brief. The Town submitted the assessment cards of six sales to support the contention that the Taxpayer's assessment falls "within established parameters." Those sales were mostly of newer homes on smaller lots -- not at all comparable or helpful in supporting the Taxpayer's market value. The Town also submitted a summary and assessment cards of ten older houses to show consistent replacement cost values. However, it is not possible to tell from the limited information on the assessment cards if these properties are truly comparable in condition and utility to the Taxpayers. The Town should have submitted, analyzed and adjusted sales of properties that were at least somewhat comparable to the Taxpayer to show that the Town fulfilled its responsibility under RSA 75:1 and the N.H. Constitution to assess property proportionately to the market. Otherwise, as in this case, when clear evidence is submitted as to significant physical and functional conditions with the Property, the Board must rely on its experience and technical knowledge to analyze the evidence submitted to reach an equitable assessment. See RSA 541-A:18, V(b).

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

$198,950 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The

motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Lesley E. Shearer, Taxpayer; and Chairman, Selectmen of Gilmanton.

Dated: June 3, 1993

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Melanie J. Ekstrom, Deputy Clerk

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