

Robert Reed

v.

Town of Gilmanton

Docket No.: 10904-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$18,500 (land \$13,900; building \$4,600) on a .30-acre lot with a building (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 Property has no water or sewer and is a nonconforming lot;
- 2) the Property is not grandfathered and would not meet Town regulations if the building was salvaged;

- 3) the building needs extensive repairs and would cost \$10,000 to demolish;
- 4) the \$2,000 auction price in 1988 was the fair market value;
- 5) the Property's only value would be to an abutting landowner for supplemental land; and
- 6) the Property was recently resold for \$2,000.

The Town revised the assessment to address the building's physical depreciation, resulting in a new assessment of \$14,800. The Town argued the revised assessment was proper because:

- 1) the same methodology was used throughout the Town;
- 2) the value was based on land sales used in the 1990 revaluation;
- 3) the Property is waterfront and is assessed lower than other waterfront lots in the Town; and
- 4) the Taxpayer failed to prove disproportionality.

Board's Rulings

Based on the evidence, the board finds the Town's revised assessment of \$14,800 to be reasonable based on the evidence submitted.

The board finds the sale at auction of the Property by the Town in 1989 for \$2,000 does not meet the requirements of an arm's length transaction and is not conclusive evidence of market value. No evidence was submitted as to the extent of the advertising of the auction (other than being "well advertised") or the number of qualified bidders present. The auction requirement of full payment at the time of sale is not usual market conditions - even for auctions. The Taxpayer received title to the Property by a tax collector's deed, which transfers fewer rights than a warranty deed.

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From the evidence, it is clear that the improvements have little or no value due to their condition and obsolete original use. A procedure to estimate the value of the Property is to subtract the cost of demolition from an estimate of the parcel as if vacant. The Taxpayer stated he had a bid to demolish for \$10,000. If vacant, the lot at least has the value for direct access to the lake. The Town submitted sales of properties that indicated waterfront lots were assessed with a land condition factor of 425 while water access lots had a condition factor of 175. As presently improved, the lot has been appraised with a condition factor of 100. If vacant and appraised on the highest and best use assumption of a water access lot, the lot would have a value of \$24,325 ($\$12,636.36 \times 1.1 \times 1.75$). If the demolition estimate of \$10,000 is subtracted, the present value, by this method, is estimated at \$14,325. This estimate supports the Town's recommended revision to \$14,800.

If the taxes have been paid, the amount paid on the value in excess of \$14,800 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

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

Dated: April 22, 1993

Melanie J. Ekstrom, Deputy Clerk

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Town of Gilmanton

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ORDER

This order responds to the "Taxpayer's" RSA 541:3 reconsideration motion, which is denied for failure to state any error in fact or in law.

Most of the arguments presented by the Taxpayer were raised and addressed in the original decision. The board finds it did not err in reviewing and addressing those arguments in the original decision. To the extent the Taxpayer attempted to introduce new evidence with the rehearing motion, specifically the photographs, the board does not accept new evidence or new arguments with rehearing motions. Such evidence and arguments should have been submitted with the original brief.

The Taxpayer placed too much weight on the board inspector's report. Most importantly, the report was based on the written information in the file without an on-site inspection. To the extent the report included any information, that information was obtained from the parties' written submittals. For instance, the board inspector did not confirm the \$10,000 demolition cost; he merely used the Taxpayer's figure. Finally, the inspector's report is treated as another piece of evidence, and it is not

binding on the board. It is reviewed and given the weight deemed appropriate by the board. In this case, the board chose not to rely on the inspector's report because of the other factors enunciated in the decision and this order.

The Taxpayer also placed undue importance on his \$2,000 purchase price and his \$2,000 sale price. He argued, both in his original brief and his rehearing request, that the \$2,000 represented the Property's market value. The board did not and does not now accept that conclusion. The board in its decision stated a number of conditions with the purchase of the Property that would disqualify the Taxpayer's purchase or sale as an arms-length transaction. To carry his burden, the Taxpayer should have made a showing of the Property's fair market value, using sales of other properties.

This value would then have been compared to the Property's assessment 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. Based on the information provided by the Taxpayer, the board concluded the Taxpayer did not carry his burden of showing the Property's market value.

In addition to the above stated deficiencies with the Taxpayer's presentation, the board found the town made substantial adjustments to the assessment to reflect the problems inherent in this Property.

In conclusion, the board finds the Taxpayer has not shown any "good reason" to grant the motion, and therefore, the rehearing motion is denied.

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SO ORDERED.

BOARD OF TAX AND

LAND APPEALS

Franklin, Member

Paul B.

MacLellan, Esq., Member

Ignatius

CERTIFICATION

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

Dated: June 8, 1993

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Melanie J. Ekstrom, Deputy Clerk
