Thomas Beauchemin

v.

Town of Goffstown

Docket No.: 9336-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of $408,400 (land, $223,500; building, $184,900) on 72.3 acres consisting of a two-story cape (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 denied.

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).

The Taxpayer argued the assessment was excessive because:

1) properties with a view are not taxed uniformly throughout the Town;

2) comparables submitted by the Taxpayer indicate land with views are valued with different prices; and

3) the access to the house is difficult (two insurance companies have denied homeowners insurance).

The Town argued the assessment was proper because:

1) comparables submitted indicate Taxpayer's homesite value is equitable with other similar properties; and

2) it is not logical to use a "6/10th mile long driveway as a negative influence" as the view and privacy far outweigh the driveway.

Board Findings

The Taxpayer failed to show that his assessment was disproportionate for the following reasons:

1) Taxpayer presented no evidence of market value. To carry this burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town of Goffstown. 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.

2) While the Taxpayer made a showing that other property may be underassessed, the board finds the Taxpayer's Property was not overassessed. The underassessment of other properties does not prove the overassessment of the Taxpayer's Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayer's assessment because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the

shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., Id.

Based on the configuration of the lot, it appears as if a long driveway was necessary for development of the lot. While an argument could be made that such an access could be a detriment to the Property, it also has value for providing access to the site that has a good view, privacy, and the potential, based on the photographs, of subdivision in the future. Regardless, the Taxpayer supplied no market data evidence that the driveway access alone had a negative impact on market value. The board further notes the Taxpayer's arguments were focused primarily on the land portion. It appears from the property assessment card that the house was recently built and of excellent quality. No information was supplied by the Taxpayer relative to this component of the property or its construction cost. In arriving at a decision on whether an assessment is proper, the board must view the Property as a whole. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value.

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

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas Beauchemin, taxpayers; and the Chairman, Selectmen of Goffstown.

Date: December 28, 1992

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Melanie J. Ekstrom, Deputy Clerk

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