

**Lucien Asselin**

**v.**

**Town of Goffstown**

**Docket No.: 9423-90**

**DECISION**

The "Taxpayer" appeals pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$208,300 (land, \$87,400; building, \$120,900) for property consisting of a mixed use residential and office building on a 9,901 square foot lot (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).

The Taxpayer argued the assessment was excessive because:

- 1) comparables submitted indicate properties are not being treated equitably;
- 2) the land should be assessed between \$42,800 and \$45,000; and

3) a property-tax-assessment analysis indicated a proper assessment by averaging of \$132,433.

The Town submitted information indicating a willingness to settle at an assessment of \$184,700 for the tax years 1990 and 1991. This recommended assessment was a result of correcting the building dimensions, reducing the building grade and increasing the economic depreciation. The Town submitted comparables indicating these types of properties are being treated equitably.

#### Board Rulings

The Taxpayer focused on only the land value rather than the total value and did not present any credible evidence of the Property's fair 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. 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.

Averaging assessed values, as done by the taxpayer, does not necessarily prove "disproportionality"; it only proves that the taxpayer's property is assessed more than the average property. Appraisals are not averages; rather they are the correlation of general sales data to the unique characteristics of a specific property.

Although the Taxpayer failed to carry his burden, the board must comment on the Town's presentation. First, the Town focused on its 1988 base year rather than the 1990 tax year. The Town must annually review its

assessments and adjust those that have declined or increased more in value than values generally changed in the Town. RSA 75:8 states:  
The assessors and selectmen shall, in the month of April in each year, examine all the real estate in their respective cities and towns, shall reappraise all such real estate as has changed in value in the year next preceding, and shall correct all errors that they find in the then existing appraisal \*\*\*.

See also, 73:1, 73:10, 74:1, 75:1. As stated in Appeal of Net Realty Holding Trust, 128 N.H. 795, 799 (1986), a fair and proportionate tax can only be achieved through a constant process of correction and adjustment of assessments. In yearly arriving at an assessment, the Town must look at all relevant factors. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). While the board prefers to receive recent sales indicative of the tax year under appeal to support assessments, providing sales is essential for the board to compare the Property's assessment with fair market value and the general level of assessment in the municipality. See Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986).

However, based on the Town's recommended assessment, the board finds the assessment should be \$184,700. The board further notes that it would have been helpful to both the Taxpayer and the board if the Town had commented on the land assessment argument raised by the Taxpayer.

If the taxes have been paid, the amount paid on the value in excess of \$184,700 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

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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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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that copies of the foregoing decision has been mailed this date, postage prepaid, to Lucien Asselin, Taxpayer; and Chairman, Selectmen of Goffstown.

Dated: December 8, 1992

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Melanie J. Ekstrom, Deputy Clerk

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**ORDER RE MOTION FOR REHEARING**

The board received a letter from the Taxpayer on January 19, 1993 which the board will treat as a motion for rehearing. The Taxpayer stated that contrary to the board's decision, market data was submitted in his brief.

The Taxpayer also submitted with his letter an analysis of the land-assessment components of several comparable properties.

The board denies the Taxpayer's motion for rehearing. The Taxpayer does not purport to submit any evidence that existed but was unavailable at the time of his brief submittal. As with his brief, the Taxpayer's rehearing motion focuses on the land component of the assessment rather than the Property as a whole, and on sales that occurred in 1991 without any adjustment being made for the declining market from 1990 to 1991. This was not considered conclusive evidence of overassessment at the time of the initial appeal, nor is it a basis now for a rehearing.

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SO ORDERED.

BOARD OF TAX AND

LAND APPEALS

\_\_\_\_\_  
Member

Paul B. Franklin,

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MacLellan, Esq., Member

Ignatius

Certification

I certify that copies of the within order have been mailed this date, postage prepaid, to Lucien Asselin, Taxpayer; and Chairman, Selectman of Goffstown.

Dated: February 12, 1993

Lanigan, Clerk

Valerie B.

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