

Roger L. and Sandra A. Paradis

v.

Town of Goffstown

Docket Nos.: 9541-90PT and 11184-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessment of \$76,400 (land \$25,800; buildings \$50,600) on a 7,405 square-foot lot with a house (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was 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). We find the Taxpayers met their burden of proof.

The Taxpayers argued the assessment was excessive because:

- (1) the Property can not be mortgaged because the note could not be sold on the secondary market;
- (2) the Property was worth about \$40,000 in 1990 - 1991 if a cash buyer could have been found;
- (3) other properties have received abatements but not the Taxpayers';

(4) the Property is located in the floodplain and has been flooded in the past; and
(5) there are limitations on any addition to the building due to the septic system being in the floodplain, which would have to be improved to the present standards.

The Town agreed that the assessment could be properly adjusted because:

(1) the Town feels the value could be reduced to approximately \$70,000 for the lot being on a Class VI road;
(2) the grade on the camp has already been reduced to below average from an original higher assessment;
(3) vinyl siding was added in 1991 but no change was made in the assessment; and
(4) the Property has been assessed using the same methodology as assessing comparable properties.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$70,000. This assessment is ordered because the board concurs with the Town and the Taxpayer that an adjustment should be made to reflect the impact of being on a Class VI road. An approximate 13% reduction in the land condition factor as proposed by the Town seems realistic and is so ordered. No further adjustment is warranted because the comparable assessments and sales submitted by the Town support the revised assessment and indicate the Taxpayer's estimate of market value is too low.

In making a decision on value, the board looks at the Property's value

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as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted.

See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.)

If the taxes have been paid, the amount paid on the value in excess of \$70,000 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 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

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Roger L. and Sandra A. Paradis, Taxpayers; and Chairman, Selectmen of Goffstown.

Dated: June 2, 1994

Valerie B. Lanigan, Clerk

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