

Lewis D. Gilmore

v.

Town of Fitzwilliam

Docket No.: 12888-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessments of \$30,000 on Lot 17 and \$1,500 on Lot 16, (the Properties). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer failed to prove the Property was disproportionately assessed.

The Taxpayer argued the assessments were excessive because:

- (1) the Property is located on Johnson Road and is subject to gates and bars;
- (2) the two lots would have to be sold as a package to achieve maximum utility;
- (3) Lot 16 abuts a swamp and only has 125 feet of frontage, not 150 feet as shown on the Town tax map;
- (4) better lots in the neighborhood are assessed lower than the subject; and

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(5) a fair assessment as of April, 1992 would be \$18,000-\$20,000.

The Town argued the assessments were proper because:

- (1) the comparables do not justify a reduction;
- (2) the Howell parcel (lot 15) is made up of two contiguous lots assessed as one, does not have legal access to water, has multiple owners and may well be underassessed; however, the subject is superior in size, frontage and privacy;
- (3) the Miner parcel (lot 11) sold in July 1991 for \$25,000; and
- (4) the Property is comparable if not superior to other nearby lots on the pond.

The Town requested costs in this appeal arguing the appeal was frivolously maintained.

Board's Rulings

Based on the evidence, we find the Taxpayer failed to prove disproportionality. In arriving at its decision, the board has considered RSA 75:9 which states:

Whenever it shall appear to the selectmen or assessors that 2 or more tracts of land which do not adjoin or are situated so as to become separate estates have the same owner, they shall appraise and describe each tract separately and cause such appraisal and description to appear in their inventory.

All of the parties and the board agree that these lots would not be sold individually. The lots were purchased under a single Quitclaim Deed in 1985 and their value is in the Property's use as a single lot. Therefore, the board has made its determination based on the total assessment of \$31,500. Neither party challenged the Department of Revenue Administration's equalization ratio of 127% for the 1992 tax year for the Town of Fitzwilliam. The Property's equalized value is \$24,780.

The board finds disproportionality does not exist in this case for the following reasons:

1) The Taxpayer argued that he placed most of his appeal on the fact that Lot 15 (Howell) was assessed substantially less than the subject. The board finds that Lot 15 is not comparable to the subject Property because it does not have water frontage nor was there any evidence submitted to suggest that the lot had legal access to the pond. Therefore, in order to compare these properties, the Taxpayer would have had to submit evidence of the contributory value of water access versus properties without water access. This was not done. To merely state that an assessment should be lowered because an abutter has a lower assessment is insufficient.

2) The evidence submitted for Lot 19 (O'Neil) is inconclusive. Based on the testimony, it appears that this lot may be underassessed. However, 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 another property 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.* In addition, Lot 19 was assessed for \$27,300, is a smaller lot with less water frontage and has less privacy than the subject.

3) The Miner parcel (Lot 11) sold in 1991 for \$25,000. No evidence was

admitted to suggest that this was not an arm's-length transaction. The subject's equalized value was \$24,780. The board finds this sale is supportive of the Town's assessment.

4) The Taxpayer stated that the Property was recently offered for sale for \$20,000. However, with further questioning, the Taxpayer admitted that the Property was never listed for sale and that the offer to sell was made to someone who walked into his brokerage office. The tax year under appeal is 1992 and an offer to sell by the Taxpayer three years later is not sufficient evidence of market value in 1992.

5) Lastly, the Taxpayer compared his Property to Lot 13 owned by Hanson and stated the property was improved. The assessment of Lot 13 was \$32,000 which does not seem disproportionate to the subject Property. Further, the Hansons own two lots (12 and 13). The improvement is on Lot 12 which had a land assessment of \$47,500 (includes paving, water and sewer).

The board denies the Town's request for costs because, while the board denies the Taxpayer's appeal, we find that the Taxpayer did submit additional arguments in support of a reduction from the board's previously ordered assessment. The Town argued that the comparable properties listed in the Taxpayer's appeal to the board were different from those submitted at the hearing. The Taxpayer did notify the Town of the comparables he intended to use at the hearing. The board does not find that the Taxpayer frivolously maintained the appeal by opting to use new or additional comparables as evidence.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) 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 in 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. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Lewis D. Gilmore, Taxpayer; and Chairman, Selectmen of Fitzwilliam.

Dated: September 25, 1995

Valerie B. Lanigan, Clerk

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