

Edward and Kathleen Lynch

v.

Town of Gilsum

Docket No.: 13518-92 PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment on a house and a 12.5-acre lot (10 acres in current use). The board was unable to determine whether the assessment was \$117,800 as reported on the Town's checklist or \$119,500 as the Town outlined in its brief (the Property). The Taxpayers 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 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 failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

1) it was inequitable because the Town had not been revalued for many years and thus, the assessments had not been adjusted for 12 years;

Page 2

Lynch v. Town of Gilsum
Docket No.: 13518-92PT

2) the inequity was shown by comparing the Property's assessment to other assessments, analyzing the home-site assessments and comparing the values to the assessments; and

3) a 1991 appraisal estimated a \$176,000 value.

The Town argued the assessment was proper because:

1) the assessment was based on the Town's 1981 revaluation done by the department of revenue administration (DRA);

2) the Taxpayers' arguments were based on flawed methodology; and

3) the Town's 1994 assessment, arrived at during the 1994 revaluation, supported the equalized 1992 assessment.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove overassessment.

In response to the Taxpayers' arguments (with reference to the numbered paragraphs above), the board makes the following responses.

1) The Taxpayers argued the assessment was inequitable because the Town had not been revalued in 12 years. While the time lapse since the last revaluation certainly is a factor the board considers, it is not a determinative factor. Additionally, the Town was reassessed in 1994, and the Property's 1992 equalized assessment was generally consistent with the Town's 1994 assessment arrived at during the 1994 revaluation.

2) The Taxpayers' methodology was flawed in two ways. First, one of the values used by the Taxpayers was a value estimated by the Taxpayers. This is not correct methodology. Secondly, the Taxpayers may have shown the other

properties were underassessed compared to their market values. However, the

Page 3

Lynch v. Town of Gilsum

Docket No.: 13518-92PT

board's focus is on how the Property's assessment compares to the general level of assessment in the Town not to the level of assessment on only a few selected properties. In 1992, the DRA determined the general level of assessment in the Town was 60%. Thus, the Taxpayers' evidence of selected properties does not show overassessment of the Property.

Even if the Taxpayers' calculations showed underassessment of other properties, the underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' 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.

3) The Taxpayers' 1991 appraisal was too flawed to rely upon. Specifically, the appraisal failed to make any adjustment for the Property's two-car garage or the attached and detached barn(s) and shed(s). Unfortunately, the appraisal did not include a complete set of photographs or a complete sketch of the buildings and the site. The assessment cards in 1992 included 3 outbuildings, a two-car garage and 2 attached barns. The 1994 assessment card included 1 attached barn, 1 attached shed and a two-car

garage. At a minimum, the appraisal fails to accurately reflect the value of the Property's two-car garage. On the sales comparison grid, the appraiser

Page 4

Lynch v. Town of Gilsum
Docket No.: 13518-92PT

made adjustments to the comparables assuming the Property did not have a two-car garage. In addition to this, the Town placed more than just minimal value on the attached barn(s) and shed(s), which the appraiser does not even address. Finally, the appraisal used a bank sale (comparable 3) without making any adjustments for this factor. Given the above problems, the board could not conclude that the appraisal represented the Property's value as a whole.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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 reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Page 5
Lynch v. Town of Gilsum
Docket No.: 13518-92PT

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Edward & Kathleen Lynch, Taxpayers; and, Chairman, Selectmen of Gilsum.

Dated: February 28, 1995

Melanie J. Ekstrom, Deputy Clerk

0006