

Glenn L. and Meredith Tonnesen

v.

Town of Gilmanton

Docket No.: 16001-95PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$366,400 (land \$39,200; buildings \$327,200) on 9.54-acre lot with a single-family home (the Property). The Taxpayers also own, but did not appeal, four other properties in the Town with a combined, \$75,161 assessment. 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 a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

- (1) other similar houses in the town had a quality factor of A5 versus an A8

quality factor for the Property;

(2) the Property is not located in the historic district;

(3) a separate deal allowed the Taxpayers to purchase additional land abutting the Property at very favorable terms. The Taxpayers would not have purchased the appealed property if this separate deal were not available. The Property and the abutting land were owned and purchased from the same person;

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(4) the sale price does not reflect market value as the Taxpayers were from out of state and were not knowledgeable concerning the local real estate market; and

(5) the assessed value should be approximately \$295,000.

The Town argued the assessment was proper because:

(1) the Property was 60% complete as of March 1994, the date of the last interior inspection;

(2) the Taxpayers purchased the Property in September 1994 for \$450,000 along with the adjacent lot containing 113.35 acres; the sale was confirmed to be arm's-length with the grantor, Douglas Towle;

(3) the Nagel sale, in June 1995 for \$325,000, supported the Property's assessment with the A8 quality adjustment factor and indicated the Nagel, Freese and Boudette properties were underassessed;

(4) Mr. Towle described the condition of all the houses as having consistent quality of construction and attention to detail;

(5) the quality adjustments of Nagel, Freese and Boudette were all adjusted to A8 after the Nagel sale; and

(6) the assessment is correct as it stands.

**Board's Rulings**

Based on the evidence, the board finds the Taxpayers failed to show the Property was disproportionately assessed.

The Taxpayers primary concern was that the Property was overassessed in comparison to other properties of similar quality in the Town. The Taxpayers own a restored colonial dwelling and specifically chose three other older houses that had been restored by the same person for their assessment comparison. The person responsible for the restorations of the three comparable homes, Mr. Douglas Towle, indicated in a letter to the Town, dated November 12, 1995, that the three comparable houses selected by the Taxpayers in this appeal are of equal quality. The Taxpayers testified that the quality factor on the Property was A8 and should be reduced to A5, the quality factor

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on the three comparable properties. The Taxpayers also testified that,

subsequent to their appeal for an abatement, the Town improperly raised the quality factors for the three comparable properties rather than lowering the Property's quality factor. The Town testified that the last interior inspection of the Property, before the appeal, had been in March, 1994 at which time the Property was approximately 60% restored. Additionally, the Town indicated that no inspections of any of the Taxpayers' comparable homes had been made prior to the abatement requests filed by the Taxpayers and Mr. Towle. One of the comparable properties (Nagel) chosen by the Taxpayers to show disproportionate assessment was sold for \$325,000 in June, 1995. This property was of consistent quality and construction as the subject Property and was verified as an arm's-length transaction by Mr. Towle. The selling price supported the Taxpayers' assertion that Nagel was inequitably assessed.

However, the board finds the Nagel sale supported the assessment of the Property with the A8 quality adjustment factor and indicated the Nagel, Freese and Boudette properties were underassessed. 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 measures 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.*

When the Town changed the quality factor from A5 to A8 on the assessment-record card for the Nagel property, the revised assessment was within 5% of the actual selling price. The board finds the Town did not act

improperly when it adjusted the quality adjustment factors of Nagel, Freese and Boudette but rather was fulfilling its obligation to review assessments

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and revise them as necessary. 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).

Additionally, the Taxpayers testified they may have paid more than market value for the Property because they were from out of state and were not familiar with the local real estate market. However, a review of the assessment-record cards for the Property (map 64, lot 10) and the abutting tract of land (map 64, lot 10, subplot 100) that were purchased together for \$450,000 shows the Town's ad valorem assessment for these two properties (\$445,100) to be within 1% of the actual purchase price. The board finds this evidence supports the Town's position that the Property is not overassessed. The Taxpayers testified that they would not have purchased the Property if

they had not been able to purchase, through a separate deal, some additional tracts of vacant land from the same owner at the same time. The Taxpayers purchase of the additional properties (map 64, lot 7; map 64, lot 8; map 64, lot 17) for \$150,000 was considered by them to be a very favorable transaction due to the advantageous financing terms given by the grantor.

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The Taxpayers focused their arguments on the quality adjustment factor, not the price paid for the Property. The board, however, must view the Property in its entirety to determine whether the assessment is proper. See Appeal of Town of Sunpaee, 126 N.H. 214, 217 (1985).

The total assessment of the Taxpayers' estate, for which they paid \$600,000, is \$525,100 before applying the current use credits. The combined assessment (ad valorem) equates to 88% of the purchase price. This data supports the Town's position that the Taxpayers are not overassessed.

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

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Glenn L. and Meredith Tonnesen, Taxpayers; and Chairman, Selectmen of Gilmanton.

Date: June 18, 1997

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Valerie B. Lanigan, Clerk

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