

Terry R. and Myrtle L. Clapp

v.

Town of Goffstown

Docket No.: 17774-98PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$124,100 (land \$34,200; buildings \$89,900) on a 1.15-acre lot with a single-family home (the "Property"). 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. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the 20% economic obsolescence factor formerly applied to the Property for its proximity to the pig farm should be reinstated;
- (2) there are some inaccurate area measurements for certain parts of the dwelling; and

(3) the grade index has changed although no changes to the Property have occurred.

The Town argued the revised assessment was proper because:

- (1) an assessment update showed no economic obsolescence factor should be applied; and
- (2) comparable sales support the revised assessment.

The board took a view of the Property on March 1, 2000. Additionally, a second view was taken on July 12, 2000.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not prove the Property was disproportionately assessed.

The Taxpayers' main argument was the Property's close proximity to an abutting pig farm reduced the value of the Property due to the odors emanating from the pig farm. Subsequent to the hearing, the board took a view in March 2000, on a sunny, albeit a somewhat cool day. Because of the atmospheric conditions the board waited until the middle of the summer to take another view and did so in July on a much warmer, sunny day. The board parked in the Taxpayers' yard on both occasions and did not detect any odors emanating from the pig farm. However, while walking down the public roadway towards the pig farm, the board did smell odors at the lowest elevation of the road between the pig farm and the Property. The board returned to the Property but did not find evidence of the odors while standing in the Property's driveway. However, this does not mean that there are never any offensive odors emanating from

the pig farm or experienced on the Property, this just means the two times the board visited the Property, no pig farm smells were detected.

The board understands it is a difficult task to quantify the effect the odor has on the Property; however, the board was not convinced by its view of the Property on two occasions that the effect on its value is significant or that other neighboring properties do not experience the same nuisance. Further, the Taxpayers did not present any credible evidence of the Property's market value or how its proximity to the pig farm affected its market value. To carry their burden, the Taxpayers should have made a showing of the Property's market value by comparing the Property to sales of comparable properties similarly encumbered. This value would then have been compared to the Property's assessment and the level of assessment 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. 214, 217-18 (1985). The Taxpayers raised concerns about certain errors in the assessment. However, the Taxpayers did not show these errors resulted in disproportionality. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985), quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

For these reasons, the board finds the adjustment requested by the Taxpayers for the odors emanating from the pig farm is unwarranted and, therefore, the board denies the appeal.

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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Terry R. and Myrtle L. Clapp, Taxpayers; and Chairman, Board of Selectmen of Goffstown.

Date: August 23, 2000

Lynn M. Wheeler, Clerk