

Laurence J. Stanford Jr.

v.

Town of Gilmanton

Docket No.: 21114-04PT

and

Laurence J. Stanford Jr. and MaryAnn McCulley

v.

Town of Gilmanton

Docket No.: 21116-04PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the following assessments in the above two dockets, which have been consolidated for hearing and decision:

Docket No. 21114-04PT, \$73,100 on Map 57/Lot 81, a vacant land property on 0.340 acres on Province Road (“Lot 81”) owned by Laurence J. Stanford Jr.; and

Docket No. 21116-04PT, \$73,100 on Map 57/Lot 80, a vacant land property on 0.340 acres on Province Road (“Lot 80”) owned by Laurence J. Stanford Jr. and MaryAnn McCulley;

(collectively, the “Properties”). [Taxpayers Stanford and McCulley also own, but are not appealing, Map 51/Lot 10, a vacant land property on 16 acres assessed in current use at Shannon Road.] For the reasons stated below, the appeals for abatement are denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; Tax 201.27(f); Tax 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the Properties’ assessment were higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

At the hearing, the board noted these appeals were originally scheduled to be heard on May 3, 2007 along with the appeal of another property on Province Road (see Nagy v. Town of Gilmanton, Docket No. 21196-04PT, which was decided by the board after a view of the property and its comparables was taken). The parties agreed the board could take official notice of the evidence and view of the Nagy property (also used as a comparable in these appeals) and views of the comparables (also used by the Town in these appeals) and the general area of Province Road. See RSA 541-A:31, VI (d).

The Taxpayers argued the assessments were excessive because:

- (1) the two lots have been owned for over 30 years and are undeveloped, without water and sewer, densely wooded and have not been cleared;
- (2) a variance would be required to develop the lots because the Town has a minimum 2.1 acre size restriction;
- (3) there may not be enough acreage in each lot for a septic system and percolation tests; and perhaps additional acreage would be required to develop each lot;

(4) the per acre comparisons shown in Taxpayer Exhibit No. 1 indicate the lots are overassessed;
and

(5) the lots are not for sale but several years ago offers to purchase each lot were received for approximately \$25,000 each.

The Town argued the assessments were proper because:

- (1) a Town-wide revaluation was performed in 2004;
- (2) the lots are proportionately assessed for the reasons contained in Municipality Exhibit Nos. A and B;
- (3) the lots did receive adjustments based on their undeveloped condition (25 points) and small size which would require a variance for development (50 points), reducing the condition factor applied to the land from 200 to 125;
- (4) the Taxpayers' use of a price per acre comparison is not appropriate because each developable house lot should be viewed as one economic unit, irrespective of acreage differences.

The parties stipulated the level of assessment in the Town was 99.8% in tax year 2004.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Properties were disproportionately assessed.

As stated above, the Taxpayers have the burden of proving by a preponderance of the evidence that they are paying more than their proportional share of taxes. This burden can be carried by establishing that the taxpayer's property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the municipality.

Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). To carry their burden, the Taxpayers should have made a showing of the Properties' market value. The Taxpayers failed to present such evidence. This value would then have been compared to the assessment on each lot and the general level of assessment in the Town. See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

The Taxpayers submitted Taxpayer Exhibit No. 1, a tax assessment comparison that included a grid analyzing the lot sizes and assessments to determine a "per acre" assessed value which were then plotted to show the Properties' alleged disproportionality to other size tracts. The board finds this evidence lacks credibility as the Taxpayers failed to submit any evidence to show how the lots compared to the Properties. No assessment-record cards were submitted; nor were any detailed description of the various lots' access, topography, views, improvements, etc. provided for the board to arrive at any conclusion of value. In general, averaging assessments on different properties, either on a per acre or some other basis, is not a reliable method of meeting a taxpayer's burden of proving disproportionality. See, e.g., Corson v. City of Manchester, BTLA Docket No. 19059-01PT (November 20, 2003).¹

¹ As stated in Corson:

The proportionality of assessments is based on the market value of the Property compared to the general level of assessment for the municipality as a whole, not the level of assessment of a few or a particular class of property. See Appeal of Andrews, 136 N.H. 61, 64-65 (1992), cited and discussed in John S. Drinkwater Revocable Trust v. Town of Wolfeboro, BTLA Docket No. 19134-01PT (September 25, 2003), 2003 WL 22351507.

In addition, averaging assessments is a disfavored methodology because it does not reflect the unique characteristics of each property and the differences that the market is likely to recognize between different properties. Drinkwater, supra.

The Taxpayers argued the lots had minimal value because of their small size (0.34 acres each), Town setback requirements and the potential of a variance being denied, along with the cost to clear the tree growth as depicted in Taxpayer Exhibit No. 2. They stated \$25,000, a price offered for each lot several years ago, is evidence of the true value of the Properties. The board does not agree. The Taxpayers did not accept these offers and no evidence was presented as to whether the offers were made based on any market evidence, such as an appraisal from the prospective buyer(s).

The Town agreed the lots are small, undeveloped and would require a variance to build because of their size limitations and required clearing, but argued the lots had view potential and the adjustments made are adequate (condition factor of 200 for potential view minus 25 undeveloped minus 50 size for an overall 125 condition factor). The Town submitted three similarly sized sales of improved lots, without views, which support their contention the lots could be improved. Further, the Town submitted two sales of improved lots with views in the immediate vicinity of the Properties (one similarly sized and one larger lot) on Province Road in support of the condition factor placed on the lots for their potential views.

Although the board agrees the Properties have limited development potential and there may be uncertainty in obtaining a variance to build on each lot, we find these factors have been accounted for in the adjustments made by the Town to the assessments on each lot. We therefore find the Taxpayers failed to prove disproportionality and deny these appeals.

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(f). 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

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Laurence Stanford, Jr. and MaryAnn McCulley, 21710 Palmetto Dunes Drive - #202, Estero, FL 33928, Taxpayers; James Commerford, Commerford Nieder Perkins, LLC, 556 Pembroke Street, Suite #1, Pembroke, NH 03275, Municipality Representative; and Chairman, Board of Selectmen, Town of Gilmanton, PO Box 550, Gilmanton, NH 03237.

Date: September 21, 2007

Anne M. Stelmach, Clerk