

James C. and Mary Ann Malouin

v.

Town of Goffstown

Docket No.: 25621-10PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2010 assessment of \$218,100 (land \$93,700; building \$124,400), 15 Alpine Drive, on Map 5/Lot 62I, a single family home on 1.62 acres (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was 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 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 house, deck, well and driveway are partially or fully located within the 100’ public service easement (“easement”) (see plan of Property at Taxpayer Exhibit No. 1);

(2) the land was purchased in 1977 and the home was then built; prior to receiving the certificate of occupancy, the Taxpayers were told the location of the improvements, which were required to be 50' from the center point of the power line was "okay;"

(3) nine years later, when the Taxpayers were planning on selling the house, the sale fell through at closing because of title issues due to the encroachment on the easement;

(4) after being advised by an attorney in the Town that they had an unmarketable property, Mr. Malouin contacted the Town's assessor, Scott W. Bartlett, who indicated many homes in the Town were built within a easement; however, these other homeowners may not have known of any encroachment on their property at the time of purchase;

(5) in June 2010, Mr. Malouin contacted Judy Parys of Chicago and Ticor Title Insurance Companies ("CTT") (Taxpayer Exhibit No. 2) to question whether Absolute Title would issue title insurance to a buyer under the existing circumstances and whether the marketability of the Property was affected by the infringement on the easement;

(6) Ms. Parys responded she "imagined" a bank would have the same objections as occurred in the prior attempt to sell the home;

(7) a "price recommendation" made by Jay Gagne of Profile Realty (Taxpayer Exhibit No. 3) recommended a list price of \$202,500-\$212,500 but noted the Property was not marketable at the present time; and

(8) the estimated market value of the Property, based on a cash sale, is approximately \$150,000.

The Town argued the assessment was proper because:

(1) an assessment review & appraisal report was prepared by Scott W. Bartlett ("Bartlett Report"); the Bartlett Report (Municipality Exhibit A) did not estimate a final market value or assessed value acknowledging the main issue in this appeal was the impact of the easement on

the value of the Property “in order to determine if the adjustments that have been made to the assessment of the subject property are sufficient;”

(2) Mr. Bartlett testified the Property received a 20% adjustment since the early 1980’s for the effect of the easement; however, in 2009, the Town performed a review of all properties with easements and changed all adjustments to 3% to 10% on the land value only;

(3) 2009 was the first year the Property’s adjustment was changed from 20% to 10%;

(4) Mr. Bartlett testified over 100 properties in the Town were impacted by an easement and 17 properties were impacted where the house itself encroaches on the easement;

(5) the adjustment to the Property’s assessed value has been made assuming the house encroaches on the easement even though the Town’s GIS system indicates it does not (See Municipality Exhibit A, Tab A, page 2);

(6) the Taxpayers’ argument the Property is not marketable is not supported by the fact that seven impacted properties have sold since 2003, the most recent being 35 Mountain Road on November 13, 2009 and these purchasers obtained mortgages and title insurance;

(7) Mr. Bartlett performed a matched pair analysis to determine adjustments of negative \$2,000 to negative \$20,000; the Property’s assessment is adjusted downward \$19,200;

(8) Mr. Bartlett spoke with Ms. Parys who was not very forthcoming and Mr. Tim Boucher who was not involved in the original e-mail whose responses to Mr. Malouin were based on discussions and representations, not on an application; and

(9) the evidence presented supports the adjustment to the Property is fair and reasonable.

The parties agreed the level of assessment in the Town was 103.4%, the median ratio calculated by the department of revenue administration.

Board's Rulings

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

“In an abatement case, the Taxpayer has the burden of proving by a preponderance of the evidence that the Property at issue was assessed disproportionately to other property in the Town.” Appeal of Sokolow, 137 N.H. 642, 643 (1993). To succeed on a tax abatement claim, the Taxpayer has the burden of proving by a preponderance of the evidence that he is paying more than his proportional share of taxes. Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003).

Thus, in arriving at a judgment regarding proportionality, the board applies its learning and experience in taxation, real estate appraisal and valuation. See RSA 71-B:1; see also RSA 541-A:33, VI. Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979) (use of judgment in selecting valuation methodology and assumptions). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

Mr. Malouin testified the Property was not marketable because of the encroachment into the 100' easement. He testified the well was located entirely within the easement, as was a majority of the driveway, and the house and deck were partially within the easement. Further, an attempt to sell the Property in the mid-1980's fell through because a title company would not issue title insurance to the buyer. Mr. Malouin presented as evidence Taxpayer Exhibit No. 2, an

e-mail to Attorney Judy Parys of CTT wherein he sought information as to the marketability of the Property. Ms. Parys responded, based on the facts provided by Mr. Malouin, she “imagined” a purchaser would have the same objections to the encroachments as he had described. In support of his argument, Mr. Malouin presented a plan of the Property (revised November 1990) and the last page of a price recommendation from Profile Realty who indicated a recommended list price of \$202,500-\$212,500 but then noted “[t]his property is not marketable at the present time, due to an encroachment of the utility easement.” (See Taxpayer Exhibit Nos. 1 and 3.)

The board has reviewed the three documents submitted by Mr. Malouin and finds this evidence is not conclusive that the Property is not marketable. While there is no doubt the well, driveway and portions of the house and deck encroach on the easement, the evidence presented is insufficient to support the contention that the Property is not marketable. Mr. Malouin represented to Ms. Parys (in the e-mail provided to the board), a title company would not issue insurance to the buyer. No supporting documentation was provided to Ms. Parys or the board from the buyer or the title company to indicate the exact reason for the denial at that time (the mid 1980s). Further, no evidence has been submitted to suggest that the Taxpayers have attempted to sell their Property since the 1980s. The Profile Realty price recommendation submitted is the last page of a document which references documentation provided by the Taxpayers from “PSC of NH” which has not been provided to the board for its review.

Further, the Town presented in Municipality Exhibit B at Tab O a copy of an August 23, 2004 “Home Equity Line of Credit Mortgage” in the amount of \$122,000. This line of credit certainly supports a bank, knowledgeable of the utility easement,¹ would issue a loan on the

¹ Exhibit A of the Home Equity Line of Credit Mortgage states the Property is “[s]ubject to a utility easement granted to Public Service Company of New Hampshire, recorded with the Hillsborough County Registry of Deeds at Book 1574, Page 192.”

Property, and contradicts the Taxpayer's assertion the Property could only be sold to a "cash buyer."

The board concurs with the Town that had the location of the well, driveway, house and deck been an issue, the Taxpayers would have been asked to move their location. This has not occurred and the Taxpayers evidence is insufficient to support an abatement in this appeal. Mr. Bartlett testified he analyzed all properties (over 100) in the Town that were impacted by various easements and applied adjustments to each based on his analysis. This testimony is evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982). In his report, Mr. Bartlett researched qualified sales from 2007 with 100' utility easements crossing through the properties and determined whether the properties had marketable title.² He assumed if a property was transferred with a warranty deed³ and was secured with a mortgage, then it had marketable title. He also determined whether there was any indication the properties sold for less if they had easements by performing matched pairs analysis.

Of six properties which sold from June, 2007, all sold with a warranty deed and all obtained mortgages to "secure all, or a portion of, the selling price." He confirmed four of the six properties received title insurance and three of the six properties were impacted as significantly as the Property. Five sales were analyzed to determine the impact of the easement. Two of the sales with comparable impact showed a "valuation impact of \$0 or 0% and \$12,000 or 12% respectively."

² The supreme court has described a "marketable title as one that is 'free from reasonable doubt in law or in fact; not merely a title valid in fact but one which can be readily sold to a reasonably prudent purchaser or mortgaged to a person of reasonable prudence[,...] a title... free from any reasonable objection of a reasonable purchaser.'" North Bay Council, Inc., Boy Scouts of America v. Bruckner, 131 N.H. 538, 544; Paradis v. Bancroft, 97 N.H. 477, 479.

³ "A deed conveying to the grantee **title** to the property free and clear of all encumbrances except those stated in the deed itself." Property Appraisal and Assessment Administration, The International Association of Assessing Officers, p. 667 (1990).

The Town methodology indicates applying a -3% to -10% adjustment for the existence of a utility easement is supported by its research. The Town has applied an adjustment to the Property of -\$10,300 (-10%) of the land value (the high end of its range) with an additional -\$9,600 (2010 abated assessment) for a total adjustment of -\$19,900.

Based on its analysis, the Town concluded the Taxpayers' Property was marketable and the adjustment made to reflect the utility easement was proper. The board concurs with the Town and the request for abatement is denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") 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(g). 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: James C. and Mary Ann Malouin, PO Box 276, 15 Alpine Drive, Goffstown, NH 03043, Taxpayers; and Chairman, Board of Selectmen, Town of Goffstown, 16 Main Street, Goffstown, NH 03045.

Date: 2/5/13

Anne M. Stelmach, Clerk