

George, Katerini and Alexander Vantarakis

v.

Town of Gilmanton

Docket No.: 10405-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$32,800 on Lot 28 Varney Road, a vacant, .71-acre lot (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. However, in order to arrive at an appropriate decision, the board held a hearing on July 21, 1993.

The Taxpayers failed to appear, but consistent with our Rule, TAX 102.03(g), the Taxpayers were not defaulted. This decision is based on the evidence presented to the board. 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 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the assessed value was determined by using 1.4 acres instead of its .71

acre actual size;

(2) the Property was for sale for 2 years and didn't receive any offers more than \$20,000;

(3) a price opinion, prepared by Curry Realtors, indicated a value between \$17,000 and \$23,000; and

(4) the September, 1991 sale for \$26,000 (located off Crystal Lake) is not comparable because it has 113 feet of water frontage with a dock while the Taxpayer's Property does not.

The Town argued the assessment was proper because:

(1) a review of the assessment record card indicates the acreage is .71;

(2) the Property has good development potential with deeded beach rights to a private beach;

(3) a condition factor of 200 was applied to all back lots to account for the parcel's access to Crystal Lake; however, the Taxpayer's Property had a condition factor of 175 to account for a utility easement on the Property;

(4) comparable assessments indicate the assessment is consistent in value; and

(5) the Taxpayer's September, 1991 comparable, Map 39 lot 5 subplot 1800, has swampy water frontage and a question as to ownership, and the sale, when time adjusted, indicates the Property is fairly assessed.

The board's inspector reviewed the assessment record card and the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the assessment was proper. Note: The inspector' report is not an appraisal. The board reviews the report and

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treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendations. In this case, the board gave the inspector's report no weight.

Board's Rulings

Based on the evidence, we find the Taxpayers failed to prove the Property's assessment was disproportional for the following reasons:

(1) the Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments 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. at 217-18;

(2) the Taxpayers submitted an undated value opinion prepared by Curry Realtors that included listing sheets of four properties on the market and four properties that sold between April, 1991 and December 1991. The opinion provided no evidence as to how the 1991 market related to the April, 1990 assessment date; and

(3) the Town submitted assessment cards that indicated consistent assessment methodology and that the values were based on sales during the

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revaluation; consistent analysis and methodology is some evidence of proportionality; see Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982)

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to George, Katerini and Alexander Vantarakis, Taxpayers; and Chairman, Selectmen of Gilmanton.

Dated: 9/9/93

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Valerie B. Lanigan, Clerk