

**Paul G. Brodeur and Susan M. Brodeur**

**v.**

**Town of Gilmanton**

**Docket No.: 10825-90**

**DECISION**

The "Taxpayers" appeal pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$104,300 (land, \$71,400; building, \$32,900) on .60 of an acre of land and a camp (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is granted.

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 carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) compared to neighbors the land value is overassessed;
- 2) the land is .60 of an acre with 110 feet of shorefront yet the neighbors have 2.30 acres and 170 feet of frontage (Talbot) and 3.0 acres and 250 feet

of frontage (Hansen) and the land value is 85% and 90% of their appraisals;

- 3) there are two right-of-ways to the Property not owned by the Taxpayers, yet are maintained by the Taxpayers for accessibility to the Property;
- 4) the Property has a lot of erosion and is steep;
- 5) \$71,400 for the land is too high because the Property is not prime shorefront; and
- 6) in 1990, the Taxpayers would have been more than lucky to sell for \$80,000 - \$85,000.

The Town argued the assessment was proper because:

- 1) smaller lots predating zoning, such as the subject, are treated as grandfathered buildable lots;
- 2) all other things being equal, the smaller the lot size, the greater the comparative utility and per acre value;
- 3) sales support the fact that rural land in the general area of lakes and ponds was extremely valuable compared to other locations with similar zoning;
- 4) the Property is located off a right-of-way on Manning Lake and the land value was obtained by enhancing the initial acreage value 425% for its condition and added use, i.e., waterfront property;
- 5) the land value is consistent with neighboring properties;
- 6) the Taxpayers' comparables support that the subject is well within established land values as determined by sales and the revaluation process; and
- 7) the methodology used by the town to produce the assessment was fair and equally applied.

The board's inspector reviewed the assessment-record card and the parties' briefs and filed a report with the board (copy enclosed). In this inspection. This report concluded the proper assessment should be \$82,900 (land, \$50,000; buildings, \$32,900). The inspector made the following adjustments to the Town's assessment: adjusted topography for access and shorefront. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation. The board gives the inspector's report some weight to the extent it is supported by the evidence submitted by the parties.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$100,100 (land, \$67,200; building, \$32,900). This assessment is ordered for the following reasons:

- 1) A comparison of the abutters land values to the subject indicates that the land assessment is high based on several factors: (a) the subject's access is via a right-of-way maintained by the Taxpayers; (b) the land has steep grades not addressed by the Town; (c) two of the abutters have lower site conditions on the land with more acreage and more frontage and the assessment-record cards do not indicate any site problems with any of the properties; and (d) the only abutter with a higher site condition (4.50) has 3.0 acres of land and 250 feet of lake frontage.
- 2) most of the assessment-record cards on the waterfront sales utilized by the

Town do not indicate on what lake the properties are located, and the Town

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failed to supply any type of area map for these properties, or indicate what adjustments were applied for differences, if any, between the bodies of water the properties are located on.

The board must comment on the Town's brief. The Town submitted assessment cards of seven waterfront sales to support the contention that the Taxpayers' assessment falls within established parameters. The Town also submitted assessment cards of three abutters to show consistent waterfront lot values. However, it is not possible to tell from the limited information on the assessment cards if these properties are truly comparable in condition, utility, etc. to the Taxpayers. The Town should have submitted, analyzed and adjusted sales of properties that were at least somewhat comparable to the Taxpayers to show that the Town fulfilled its responsibility under RSA 75:1 and the N.H. Constitution to assess property proportionate to the market. Otherwise, as in this case, when clear evidence is submitted as to significant physical and functional conditions of the Property, the board must rely on its experience, technical competence and specialized knowledge in evaluating the evidence and reaching an equitable assessment. See RSA 541-A:18, V(b).

If the taxes have been paid, the amount paid on the value in excess of \$100,100 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3.

The motion must state with specificity the reasons supporting the request,  
but

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generally new evidence will not be accepted. Filing this motion is a  
prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

CERTIFICATE

I hereby certify that a copy of the foregoing decision has been  
mailed this date, postage prepaid, to Paul G. and Susan M. Brodeur, Taxpayers;  
and Chairman, Selectmen of Gilmanton.

Dated: August 13, 1993

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Melanie J. Ekstrom, Deputy Clerk

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ORDER

This order relates to the "Taxpayers'" rehearing motion. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. The Taxpayers are not proposing to submit information that existed, but was unavailable, at the time of submittal of brief. See RSA 541:3.

Motion denied.

SO ORDERED.

BOARD OF TAX AND

LAND APPEALS

\_\_\_\_\_  
Franklin, Member

Paul B.

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LeBrun, Member

Michele E.

I certify that copies of the within Order have this date been mailed, postage prepaid, to Paul G. and Susan M. Brodeur; and the Chairman, Selectmen of Gilmanton.

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Lanigan, Clerk

Valerie B.

Date: September 17, 1993

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