

Bruce A. and Joanne V. Biscornet

v.

Town of Gilford

Docket No.: 8853-90

DECISION

The "Taxpayers" appeal pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$290,400 (land \$184,250; buildings \$106,150) on a .69-acre, waterfront lot with a house (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 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 carry this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) the assessed value is higher than the market value;
- 2) the cottage was constructed in 1985 for \$30,000;
- 3) an August 19, 1991 appraisal estimates a \$245,000 value;

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4) the estimated market value is \$175,000 and the assessed value should be \$238,520;

5) half the tax rate is the school tax, and the Property is a summer home only;

6) sewer is the only Town service received, and that is paid quarterly to the Town in addition to property taxes;

7) there are errors on the assessment-record card, i.e., footage and the cottage being listed as 2 stories; and

8) the per-square-foot values are high in comparison to other properties, and the assessments have differing square-foot prices for lower and upper floors, kitchen extras, and front footage.

Upon reinspection of the Property and examination of the file, the Town's Assessor, Wil Corcoran, found the following:

1) the Town carries 150 linear feet on the lake as the basis for the assessment, which is supported by deed descriptions and the Town's cartography vendor;

2) records reflect the building size to be 1,752 square feet, which was verified upon inspection of the Property;

3) the correct area of the dock is 773 square feet, however, the Town classified and priced as dock (not land) an upland improvement of rip rap, filled with sod, and framed by seawall stones;

4) the former Town Appraiser reduced the assessed value of the dwelling based upon a lower quality grade assignment, thereby reducing the total assessment to \$272,950; and

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5) much of the appeal is based on misunderstandings, but attempts to meet with the Taxpayers were ignored.

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 adjusted assessment was proper. 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. 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' appraiser utilized three comparable sales which took place in May and June of 1991, and arrived at an August, 1991 fair market value of \$245,000 for the Property. The appraiser did not submit any evidence of the Property's fair market value as of April 1, 1990, which is the date of the assessment. Further, the evidence was that the property listed as comparable #2 was acquired after foreclosure in May, 1991, and the building was subsequently demolished. The sales made by an owner to satisfy delinquent loans are not "arms length" due to the pressure of the owner to sell. Consequently, while these accelerated sales will affect the market value of

those who choose not to sell, they alone do not define the market. The Taxpayers also argued that their appraiser "had the wrong square footage of

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the dwelling as it relates to the first and second floor of the subject property." The adjustments made to the comparables based on an inaccurate building area would lead to an inaccurate estimate of fair market value.

2) The site plan submitted by the Taxpayers has no indication on it that it was prepared by a licensed surveyor.

3) The square footage assigned to the dock area by the Town was found to be incorrect, however, the Town did not assess the upland improvement area.

4) 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 appellant." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

5) Lack of municipal services is not necessarily evidence of disproportionality. As the basis of assessing property is market value, as defined in RSA 75:1, any effect on value due to lack of municipal services is reflected in the selling price of comparables and consequently in the resulting assessment. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

The board further notes that, on at least two occasions, the Town's Assessor attempted to meet with the Taxpayers to discuss the assessment and received no response from the Taxpayers. Further, the board afforded the Taxpayers an opportunity to respond to the Town's June 1, 1993 submissions and

no response was received.

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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 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

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Bruce A. and Joanne Biscornet, Taxpayers; and Chairman, Selectmen of Gilford.

Dated: September 2, 1993

Lynn M. Wheeler, Deputy Clerk

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