

Juanita Hatt and William A. Donovan, Jr.

v.

Town of Gilmanton

Docket No.: 12942-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$115,500 (land, \$60,000; building, \$55,500) consisting of a condominium cottage (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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

- 1) it was the only unit assessed higher than the purchase price;
- 2) the builder allowed the Town to take over one built unit and three lots for back taxes;

- 3) one unit was on the market for \$225,000, appraised for \$165,000, and then auctioned for \$93,000;
- 4) local schools cannot be used and the Property is only seasonal;
- 5) most of the land is wetland and forest yet was taxed as if it could be built on;
- 6) a comparable unit, same size and age, but on the water was assessed the same;
- 7) a market analysis of water access property indicated a \$90,000 asking price; and
- 8) comparing the value of units to other properties indicated an overassessment.

The Town argued the assessment was proper because:

- 1) two sales that occurred in Crystal Springs during the revaluation were used as benchmarks in establishing an amenities value;
- 2) Crystal Springs is a seasonal community and any purchaser knows this in advance;
- 3) Taxpayers' comparable is closer to the water; however the building is smaller, accounting for the \$2,400 difference in total value;
- 4) a comparable sales analysis between Taxpayers' Property and four sales, with proper adjustments being made, indicated properties were assessed similarly; and
- 5) Taxpayers' assessment was fair, equitable and was well within established parameters developed during the April 1, 1990 revaluation.

Board Findings

Based on the evidence, the board finds the Taxpayers failed to prove overassessment. Additionally, the Town demonstrated the basis for the assessments and the basis for the different amenities' values in the condominium.

The Taxpayers' arguments focused on a comparison of the 1992 assessment to their 1987 purchase price. The focus in assessments is on market value on the assessment date, here 1992, and how that market value compares to the general level of assessment. Comparing the Taxpayers' 1992 assessment with the Taxpayers' 1987 purchase price and then arguing their assessment was the only assessment above the purchase price does not warrant an adjustment.

The Taxpayers also made arguments about assessment increases and decreases. These too are not reasons for granting an abatement.

The Taxpayers also argued the condominium when valued on a per-acre basis was valued excessively compared to the assessment on other properties. However, this comparison is without merit. This condominium is comprised of 17 individual economic units. Thus, one would expect the per-acre value to be higher than a lot with only economic unit.

Concerning the difference in the amenities' values, the Town demonstrated the basis for the amenities' differences. The Town correctly stated: "The amenity reflects an intangible but quantifiable contribution to value provided by the undivided interest in the land and improvements associated with each individual unit, above and beyond the depreciated cost to replace each unit." Town report 3.

Neither party provided the board with any market evidence. The only reference to a recent sale in the development was on page 5 in the Taxpayers' report where they indicated that unit 7 sold sometime in 1992 for \$112,000. (The board obtained a copy of the property-record card, which has been placed in the file.) The Taxpayers also discussed a realtor's opinion, but that opinion was not supplied to the board, and thus we were unable to determine whether it had any legitimate basis.

Based on the above reasons, the board denies this appeal.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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(e). Filing a reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Juanita Hatt and William A. Donovan, Jr., Taxpayers; and Chairman, Selectmen of Gilmanton.

Dated: January 13, 1995

Melanie J. Ekstrom, Deputy Clerk

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