

**Ruth E. Southworth**

**v.**

**Town of Gilford**

**Docket No.: 14321-93PT**

**ORDER**

The board of tax and land appeals (BTLA) is in receipt of a request from the "Town" of Gilford to dismiss the above-referenced appeal.

The Town cites RSA 74:17 II in support of their request, alleging that the "Taxpayer" has failed, "to grant consent to the selectmen or assessing officials to enter the property for the purposes of paragraph I shall lose the right to appeal any matter pertaining to the property tax for which such person is liable."

The Town states that the assessor did in fact inspect the interior of the subject property, and as a result, the selectmen implemented the assessor's recommendation that a \$44,800 reduction in the assessment be authorized (May 10, 1994).

Subsequently, the Taxpayer met again with the selectmen and indicated her dissatisfaction with the abatement, describing "deplorable conditions" unaddressed.

At the selectmen's request, the Town administrator attempted, unsuccessfully, to arrange a second inspection of the interior of the subject

property.

The board denies the Town's request that the Taxpayer's appeal be dismissed.

However, the board does suggest that the parties find a mutually convenient time, on or before November 15, 1994, to reinspect the interior of the subject property. The Town may be represented by one or more of the selectmen, as well as either the Town administrator or the Town assessor. The Town's delegation shall not exceed four (4) persons in number.

If the parties fail to comply with the board's suggestion, then the board may have more difficulty determining what weight to give to the testimony of both parties. We believe a second view could be beneficial to all concerned.

A hearing will be scheduled in due course.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Ruth E. Southworth, Taxpayer; and Chairman, Selectmen of Gilford.

Dated: September 22, 1994

Valerie B. Lanigan, Clerk

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Ruth E. Southworth

v.

Town of Gilford

Docket No.: 14321-93PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 adjusted assessments on the following "Properties."

Lot No.	Assessment	Property Description
14	\$ 280,400	11.75-acre lot with a house (9.75 acres are in current use)
15	\$ 300	vacant, 5.578-acre lot in current use
16.1	\$ 500	vacant, 8.939-acre lot in current use
16.2	\$ 300	vacant, 6.193-acre lot in current use
33	\$ 9,300	vacant, 137-acre lot in current use

For the reasons stated below, the appeal for abatements is denied.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer failed to prove the Property was disproportionately assessed.

The Taxpayer argued the assessments were excessive because:

- (1) the Taxpayer designed and built the house which is of below average design and construction;
- (2) moisture and drainage problems have caused severe rotting where the wood siding touches the ground; certain portions are infested with carpenter ants and lack of interior vapor barrier on interior walls has caused warping of exterior siding;
- (3) all doors and windows in the house leak, deck is rotted, improper grading has caused flooding of the garage;
- (4) the driveway is inaccessible in the winter resulting in no police, fire or ambulance protection during the winter months;
- (5) the topography of the land is steep, rocky and ledgy;
- (6) the assessment for the view is excessive compared to neighbors with similar views and others in Town with views;
- (7) the square footage of the house, grade, depreciation, neighborhood and view factor are all high based on all of the evidence submitted; and
- (8) the proper assessment should be \$234,000.

The Town argued the assessments were proper because:

- (1) the Property enjoys one of the best views in Town, is close to the lake and is elevated;
- (2) comparable sales of vacant land with views, when adjusted, support a value of the 2.0 acre lot (with a superior view of the lake) of \$100,000 as of April 1993;

(3) the building is of average quality with some deferred maintenance and an adjustment of \$65,000 (10% functional) was made as a cost to cure the deficiencies; and

(4) an analysis of sales of improved properties with expansive views, when adjusted, supported a value of the subject of \$300,000 as of April 1993.

### **Board's Rulings**

On March 11, 1996 the Town filed a motion to dismiss and a motion in limine. At the hearing the board denied the motion to dismiss but granted the Town's motion in limine. Granting the motion limited the Taxpayer's testimony to only the ad valorem assessments on which she was taxed in 1993. Lots 15, 16.1, 16.2 and 33 are entirely in current use and 9.75 acres of Lot 14 are in current use. Therefore the testimony was limited to the 2.0 acres and building not in current use on Lot 14 only.

Based on the evidence, the board finds the Taxpayer did not carry her burden of proof. As all parties agreed, this is indeed a unique property and a difficult one to value with great certainty due to the lack of comparable properties.

While the Taxpayer presented extensive evidence as to the deficiencies of the house and its present condition, the board finds the Town reasonably accounted in the final assessment for these problems. Any prospective purchaser would consider both the problems with the house and the offsetting spectacular setting and views of the site. Based on the evidence submitted by the Town, we find that the site value may be to some extent underassessed. Consequently, if the Town's depreciation on the building does not fully account for its deficiencies, it is offset by the

underassessment of the lot. Page 4  
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We note the Taxpayer, in attempting to show overassessment of her lot, compared

her Property to other properties with views where the assessment for view was less. As the board stated during the hearing, this comparison with the assessments of other parcels alone does not in itself prove disproportionality. While the market data of view lots, both improved and unimproved, was not as numerous or directly comparable as one would like, the Town's market data did generally indicate that the Property was as a whole reasonably assessed.

One of the issues raised by the Taxpayer was the incorrect square footage of living area on the assessment-record card. The board reviewed the assessment-record card and the Taxpayer's floor plans and finds their square footages reasonably agree. The Town's total square footage of living area including finished basement area totalled 4,476 square feet and the Taxpayer's total was 4,932 including the finished basement.

A motion for rehearing, reconsideration or clarification (collectively "rehearing 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 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(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are Page

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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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Ruth E. Southworth, Taxpayer; and Chairman, Selectmen of Gilford.

Dated: March 28, 1996

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Valerie B. Lanigan, Clerk

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