

Belknap Point Trust

v.

Town of Gilford

Docket No.: 14595-93PT

**ORDER**

This order relates to whether an appeal has been properly filed with the board pursuant to RSA 74:17 II (effective January 1, 1994). This issue was raised when the "Town" in response to the board's questionnaire, filed a motion to dismiss dated August 30, 1994, stating the "Taxpayer" did not respond to requests for an interior inspection of the property.

Within 10 days from the clerk's date below, the Town shall file, with the board, responses to the following questions:

- 1) What steps occurred after the January 1, 1994 effective date of RSA 74:17 II; and
- 2) Did the Town inform the Taxpayer of the effects of the failure to allow inspection.

The Taxpayer shall respond to the Town's submission within 10 days from receipt.

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If the Taxpayer does not respond, the Town may obtain an administrative inspection warrant as provided under RSA 595-B, and the board shall then rule on the Town's motion to dismiss the appeal.

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 J.H. Garvin, representative for the Taxpayer; and Chairman, Board of Selectmen.

Dated:

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Valerie B. Lanigan, Clerk

Belknap Point Trust

v.

Town of Gilford

Docket No.: 14595-93-PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$216,800 (land \$64,500; buildings \$152,300) on 0.57 of an acre of land and a house (the Property). The Taxpayer also owns, but did not appeal, several other lots in the Town. The Taxpayer 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 Taxpayer has the burden of showing the assessment was 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 carry this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property was purchased for \$261,000 in October, 1990; a garage was built in 1991 at a cost of \$9,000;
- (2) the Property is assessed \$30,000 for its view yet comparable properties are not assessed a view factor; and
- (3) the fair market value as of April 1993 was \$240,000 based on recent sales of comparable properties.

The Town argued the assessment was proper because:

- (1) the Property is not typical of properties in the area in that it is developed on both sides of the road with a year-round dwelling on the off-water side and a cottage and lakefront improvements on the lakeside;
- (2) the inconsistency in the application of the view factors was due to a procedure developed to address unusual lot configurations;
- (3) if anything, the assessment is too low because the Town, without a view of the Property, was not able to account for physical features improperly applied at the time of the revaluation;
- (4) the subject is superior to all of the sales which occurred in the vicinity;
- (5) the Taxpayer owns 10 other properties in the Town and did not show that his entire estate was disproportionately assessed; and
- (6) the Town requests that the Board either deny the appeal or order the proper assessments for the subject to be \$235,300 for tax years 1993 and 1994 and \$252,100 for tax year 1995.

### Board's Rulings

The board finds the Taxpayer failed to carry its burden.

The Taxpayer's arguments focused on the \$30,000 view component of the assessment of the road-side lot (identified as map 242, lot 228).

First, all assessments must be viewed in their totality. Simply because one component of an assessment (land, buildings, view, etc.) may be questionable does not mean the total assessed value is improper. In this case, the board finds the Town submitted adequate evidence to indicate that the view assessment was reasonable based on the development patterns of both the road and the waterfront parcels and based on the unity of use of the two parcels.

The board finds that the two parcels, lots 228 and 221, should be viewed as one property in estimating their market value due to their unity of use and proximity. See RSA 75:9. The two assessments total \$286,100. The Taxpayer did not submit any market evidence to show that the combined assessment of the parcels exceeded market value. The Taxpayer only focused on the Town's methodology which the board has found to be reasonable given the evidence submitted by the Town.

Further, the board is required to consider the assessment of all of the Taxpayer's property within the taxing jurisdiction. Appeal of Town of Sunapee, 126 N.H. 214, (1985). Because no evidence was submitted by the Taxpayer as to whether the other properties owned by the Taxpayer were properly assessed, the board is unable to consider the Taxpayer's entire estate.

The Town submitted what sales existed of waterfront property to support the assessment. While admittedly these sales are not closely comparable to the subject Property their general indication of market value does support the assessment.

The board declines to order an increase in the assessment for the 1993 tax year. However, the Town may make good faith adjustments to the assessment for 1994 and 1995 pursuant to TAX 203.05.

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. 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.

Docket No.: 14595-93PT

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 J. H. Gavin, Taxpayer's representative; and Chairman, Selectmen of Gilford.

Dated: February 13, 1996

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Lynn M. Wheeler, Deputy Clerk

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