

Albert and Joan Sakakini

v.

Town of Gilford

Docket No.: 14730-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 adjusted assessment of \$217,000 (land \$153,500; buildings \$63,500) on a .882-acre lot with a cottage (the Property). 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 prove the Property was disproportionately assessed.

The Taxpayers argued the assessment was excessive because:

- (1) the cottage is seasonal, was built in 1940 and has had no major renovations;
- (2) there is no heating system, no basement and only a crawl space under part of the living room;
- (3) the sewage must be pumped up to the Town sewer line because the sewer line was not buried deep enough; this system requires periodic maintenance;

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- (4) the dock is temporary (removed every winter);
- (5) the driveway access is over the neighbors' land;
- (6) a comparison of surrounding properties supports the overassessment of the subject;
- (7) opinions of local real estate brokers are that the Property would sell for between \$160,000 and \$170,000; and
- (8) the fair market value as of April 1993 was \$180,000.

The Town argued the assessment was proper because:

- (1) comparable sales support a market value of \$230,000;
- (2) the driveway access does not impact the marketability of the Property and the Town tax map does not indicate crossing of driveway lines;
- (3) the dock is assessed as a seasonal dock at \$17 per foot which captures the right to have a dock in addition to the cost to build; and
- (4) assessments of comparable properties support the subject's assessment.

Board's Rulings

Based on the evidence, we find the Taxpayers failed to prove their burden. The only evidence of market value submitted by the Taxpayer was a realtor's verbal opinion of value. The board, however, was unable to rely upon the opinion because there was no written basis for the value conclusion. Specifically, there was no indication for what sales were used or what adjustments might have been made to any market data to arrive at the value conclusion. Without such information, the board and the municipality are unable to review the soundness of the value conclusions.

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Based on the board's experience, we agree with the Town's testimony that driveway rights-of-ways on waterfront properties are not uncommon and usually do not significantly affect market value. The Taxpayers argued the acute configuration of the lot was different than the more rectangular representation on the tax map. The board reviewed the Taxpayers' deed. While it is not possible to definitively determine the shape of the lot (three of the four tracts comprising the lot have dimensions only with no degrees listed) from the deed alone, we conclude it is not as angular as represented by the Taxpayers and any rights-of-way do not significantly affect the utility and value of the Property.

The combined assessed value for the breakwater and the dock of approximately \$13,700 is not unreasonable given the fact that the Town's methodology for assessing docks encompasses not only the value for the physical aspects of the dock but also includes the right for it to exist.

Lastly, the board finds the Town's market analysis generally supports the assessment.

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 Page 4
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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 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

Paul B. Franklin, Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Albert and Joan Sakakini, Taxpayers; and Chairman, Selectmen of Gilford.

Dated: April 3, 1996

Valerie B. Lanigan, Clerk

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