

Kenneth F. and Bertha C. Tomlins

v.

Town of Gilmanton

Docket No.: 15148-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$126,300 (land \$59,400; buildings \$66,900) on a 1.0-acre lot with a single-family house (the Property). The Taxpayers also own, but did not appeal, a vacant lot in the Town assessed at \$10,200. 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 a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

- (1) although the water frontage on the assessment-record card was changed from 90 feet to 84 feet, the assessment was not adjusted;
- (2) the garage was disproportionately assessed compared to similar garages, and the garage experiences flooding;

- (3) the Property does not have a beach area;
- (4) the frontage on other properties were assessed at various rates but all lower than the Property; and
- (5) the Property was worth \$119,000 to \$122,000.

The Town argued the assessment was proper because:

- (1) the condition factor was the key element in the land assessment;
- (2) the amount of waterfrontage was only one element in setting the condition factor;
- (3) a sales analysis supported the assessment; and
- (4) the Taxpayers did not prove overassessment.

The board viewed the Property and its lake frontage. We also walked along the lake frontage of some abutting properties. The Taxpayers were home during the view, and the board viewed the interior of the house and the garage.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not show overassessment.

The Taxpayers did not present any credible evidence of the Property's fair market value. To carry their burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessment generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

The Town, on the other hand, submitted comparable sales. The board reviewed these sales and concluded the Property's \$127,600 equalized value ($\$126,300 \text{ assessment} \div .99 \text{ equalization ratio}$) was a reasonable assessment.

The board's initial conclusion was reinforced by the view. The Taxpayers have a valid position that the garage is located in a low-lying area, which collects water. However, the board focuses on the overall assessment, which was not excessive even with the seasonal water problem.

The Taxpayers' arguments concerning: a) the Town's correction of the Property's water frontage; b) the differing front-foot values along the lake; and c) the question of whether the Property's garage was proportionally assessed, certainly are valuation factors. However, we have concluded the overall assessment, regardless of how it was calculated, was not excessive. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

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 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

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Kenneth F. and Bertha C. Tomlins, Taxpayers; and Chairman, Selectmen of Gilmanton.

Date: November 20, 1996

Valerie B. Lanigan, Clerk

0006

Kenneth F. and Bertha C. Tomlins

v.

Town of Gilmanton

Docket No.: 15148-94PT

ORDER

This order responds to the "Taxpayers'" letter (filed December 5, 1996), which the board has treated as a rehearing motion.

Motion denied. The motion did not demonstrate that the board erred in its decision, and thus, the motion failed to show any "good reason" to grant a rehearing. See RSA 541:3.

The board finds the decision adequately presented the board's analysis. The board notes that any error the board may have made in admitting the "Town's" report did not prejudice the Taxpayers' case. Simply put, based on the Taxpayers' evidence, the view and the board's experience, the Taxpayers did not show the Property was overassessed.

Concerning the correction of the waterfrontage, the Taxpayers' burden was to show the Property, as a whole, was overassessed. The Taxpayers did not do this. The board is not required or authorized to reduce an assessment for a noninjurious error. The Town explained its methodology, and the Town's land assessment methodology did not result in any assessment change when the frontage length was corrected.

Tomlins v. Town of Gilmanton
Docket No.: 15148-94PT

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Kenneth F. and Bertha C. Tomlins, Taxpayers; and Chairman, Selectmen of Gilmanton.

Date: December 24, 1996

Valerie B. Lanigan, Clerk

0006