Harold S. and M. Eleanor Swain, Trustees
Harold S. and M.E. Swain Revocable Trust

v.

Town of Gilford

Docket No.: 15363-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of $32,600 on a vacant .69-acre lot (the Property). The Taxpayers also own, but did not appeal, another property in the Town with a $39,500 assessment. 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 their burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the adjacent lot (Lot 73) is the same size and shape and has the same topography as the Property, but Lot 73 was assessed less than the Property;

(2) the Town assessed Lot 73 for less simply because the lot was owned by the developer, yet the developer did not have to even build a road;

(3) the Town's comparables were not good evidence of the Property's value due to

differences between the comparables and the Property; and

(4) the Town stonewalled the Taxpayers' attempts to resolve and discuss the appeal.

The Taxpayers stated the Property sold in July 1996 for $29,000. The Property was not listed with a realtor. Rather, Mr. Swain, a broker himself, put up a for-sale sign and did some limited advertising. The Property was originally listed for a higher price with decreases as time went on.

The Town argued the assessment was proper because:

(1) the Property is in a development near the lake with a common beach lot, with protective covenants and with the right to hook up to sewer;

(2) there is some question about the developer's discount, but the board of tax and land appeals has allowed such a factor in other cases;

(3) the Property's assessment was adjusted (-30%) for being on the outside perimeter of the development;

(4) although specific sales could not be introduced due to the Town's failure to timely notify, other lots in the subdivision had sold for more than the assessments; and

(5) the Property was not exposed to the market sufficiently, e.g., the Property was not listed with a local broker or listed in MLS, resulting in a lower sales price. (The Town also stated the sale did not include a normal broker's fee, which would affect the price.)

Board's Rulings

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

The Taxpayers' case rested upon the assumption that the Property's assessment should be lowered because the abutting Lot 73, which was owned by the developer, was assessed for less because Lot 73 received a so-called "developer's discount." As stated at the hearing, the board's focus is on whether the Property was assessed proportionately to other assessments in the Town generally. The board's focus cannot be based on comparing only one property's assessment to one other property's assessment. This comparison does not test whether a particular property was assessed proportional to the general level of assessment.

The issue of a developer's discount has been presented to the board in several cases, but that issue is not before the board in this case. Rather, we must focus on the Property's value. The Taxpayers did not present sufficient 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 Property sold in July 1996 for $29,000. The sale price generally supports the assessment. To the extent there is an approximately 11% difference between the assessment and the sale price, the Town raised

sufficient questions about whether the sale represented the Property's full value. The Taxpayers' statements concerning their marketing efforts did not overcome these questions. Additionally, the board did not receive any information about what other lots were selling for, which evidence may have supported the sale price or an alternate market value.

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

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Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Harold S. and M. Eleanor Swain, Trustees of the Harold S. and M.E. Swain Revocable Trust, Taxpayers; and Chairman, Selectmen of Gilford.

Date: October 11, 1996

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Valerie B. Lanigan, Clerk

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