

Michael Frisella

v.

Town of Gilford

Docket No.: 16049-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$157,300 (land \$124,000; buildings \$33,300) on a .282-acre lot with a cottage (the Property). The Taxpayer also owns, but did not appeal, a vacant lot in the Town assessed at \$28,900. 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 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 Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

(1) the combined value of the waterfront lot and the back lot is greater than

the combined value of four adjoining properties; and

(2) while the Taxpayer's cottage is on the waterfront lot, the use of the waterfrontage is not different than those adjoining properties whose improvements are on the back lot.

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The Town argued the assessment was proper because:

(1) an appraisal performed by the Town's assessor, Mr. Corcoran, estimates the market value of the total property (both backlot and waterfront lot) to be \$208,800;

(2) the backlot is capable of being built on (off-site water and sewer are available) and is separately transferable;

(3) a stratified ratio performed by the Town indicates waterfront properties are underassessed as a class compared to all properties in the Town (waterfront ratio 93% - Town-wide ratio 101%); and

(4) the Taxpayer's comparables' waterfront lots are assessed as not buildable due to state and local setback requirements; these lots would have their assessments reviewed and increased if they obtain any necessary variance or permits to build.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not prove his assessment was excessive and disproportionate for two reasons: 1) the Taxpayer presented no evidence as to the total market value of his entire estate; and 2) the Town adequately addressed the differences in the assessments between the Taxpayer's Property and adjoining properties.

The Taxpayer did not present any evidence of the Property's fair market value. To carry his burden, the Taxpayer 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. 214, 217-18 (1985). The Town's appraisal contained several sales, in particular comparable five, which supported the total assessment of the Taxpayer's waterfront lot and back lot. If anything the market data supplied by the Town indicates the combined assessment of the two lots is less than market value.

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The board finds the Town's explanation of their assessment methodology of properties having both waterfront and back lots is reasonable and generally supported by the market. The Taxpayer's comparison of his improved waterfront lot with other waterfront lots that are unimproved is not an appropriate comparison. As the Town testified, their methodology assumed the smaller undeveloped waterfront lots were unbuildable due to set back requirements, and reduced the assessments by, in most cases, 65%. Further, the Town testified if an owner can obtain a building permit and constructs a dwelling on a waterfront lot, the Town will review the assessments and increase them to be similar to the Taxpayer's. In short, the board finds the Town's methodology appears reasonable and, if anything, conservative of market value in valuing these types of lots (i.e., lots split by road with varying improvement scenarios).

Further, the board finds, based on the evidence, the Taxpayer's

waterfront lot and back lot are separately transferable and achieve their highest value as separate lots. This ability to separately develop and transfer the waterfront and the back lot enhances the value of the Taxpayer's entire estate and is a factor that needs to be considered in valuing the Taxpayer's entire estate. See Paras v. City of Portsmouth, 115 N.H. 634, 67-68 (1975) (in arriving at a proper assessment, municipalities must look at all relevant factors); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985) (board must consider a taxpayer's entire estate to determine if an abatement is warranted).

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

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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

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Certification

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

Date: April 21, 1997

Valerie B. Lanigan, Clerk

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