

Jack G. and Bernadette A. Garneau

v.

Town of Gilford

Docket No.: 18578-00PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2000 assessment of \$231,000 (land \$208,000; buildings \$23,600) on Lot 216 44.000, a 0.250-acre lot with a seasonal cottage at 239 Dockham Shore Road (the “Property”). The Taxpayers also own, but did not appeal, a property located at 29 Swain Road. Both parties agreed the 29 Swain Road property was reasonably assessed for the 2000 tax year, and consequently, the balance of this decision is focused on the appealed assessment at 239 Dockham Shore Road. Appeal of Sunapee, 126 N.H. 214 (1985). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) two realtor opinions estimated a market value of \$155,000 in 1988 and \$225,240 in August of 2001;
- (2) an appraisal performed in December of 1998 estimated a market value of \$172,000;
- (3) the Property's assessment increased at a greater percentage than those of the abutting properties;
- (4) the triangular shape of the lot, the narrow water frontage (41 feet) and the inability to expand the existing improvements beyond their footprint create a nonconforming situation;
- (5) a drainage pipe collecting water from nearby roads and subdivisions bisects the lot and goes underneath a portion of the cottage before entering the lake at the Property's boundary line; and
- (6) the Taxpayers sold the Property in October 2001 for \$275,000.

The Town argued the assessment was proper because:

- (1) the Property is one of the few remaining "seasonal cottage" properties in one of the better waterfront neighborhoods in Gilford;
- (2) while it is true the narrowness of the lot restricts expansion of the cottage's footprint, there is the potential for adding a second floor on the cottage with a height variance;
- (3) the sale of the Property occurred without the benefit of a realtor, which is uncommon in the marketing of waterfront property;
- (4) an appraisal submitted by Mr. Wil Corcoran (Municipality A) estimated the Property's market value as of April 1, 2000 at \$263,700; and
- (5) applying the department of revenue administration's ("DRA") 2000 equalization ratio of 87% indicates the current assessment is reasonable.

Neither party submitted evidence to contradict the DRA's 2000 equalization ratio of .87 for Gilford.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the assessment was disproportionate. Further, the board finds the evidence submitted supports the market value estimate of \$265,517 reached by applying the equalization ratio to the assessment ($\$231,000 \div .87$).

The Taxpayers argued their assessment increased at a greater percentage than adjoining properties. The board finds such evidence does not conclusively prove the Property is disproportionately assessed. See Appeal of Sunapee, 126 N.H. 214 (1985). A greater percentage increase in assessment following a municipal reassessment or update is not a basis for an abatement since unequal percentage increases are inevitable following such an update. RSA 75:8 requires municipalities to examine all real estate in the municipality on an annual basis and reappraise such real estate as has changed in value. The Town's update complies with RSA 75:8 and is intended to remedy past inequities and, thus, the adjustments or increased assessments will vary between properties, both in absolute numbers and in percentages.

The Taxpayers submitted two opinions of value from realtors. However, the board was unable to rely upon those opinions as to conclusive market value evidence because they were for different time periods than the assessment under appeal, the market was significantly appreciating during this time period and the opinion letters did not include the specific adjustments to the comparable properties to indicate how the opinions of value were determined.

The board finds the sale of the Property in October 2001 for \$275,000 is some, but not conclusive, evidence of market value because it could have been below market value for several reasons. First, as the Town argued, the Property was not listed with realtors and, therefore, did not have full market exposure to achieve the highest price. Second, the Property was only on the

market for four days and was purchased by the first individual who was willing to pay the Taxpayers' asking price and, thus, the transaction does not meet the definition of an arm's-length transaction. See Society Hill at Merrimack Condominium Association v. Town of Merrimack, 139 N.H. 253 (1994). The sale occurred seventeen months after the assessment date of April 1, 2000 and is only \$24,000 more than the indicated market value of the Town's assessment. The rapidly appreciating market for waterfront property and the fact that the Property was not traditionally marketed and, therefore, fully exposed to multiple potential purchasers, leads the board to conclude the sale price is not conclusive of market value and is likely low.

Finally, the board has reviewed the Town's appraisal report and finds the choice of sales and adjustments utilized in estimating the market value of the Property at \$263,700 are reasonable. The Town chose several sales that have limited frontage and minimal seasonal improvements (with the exception of Comparable #2) and, with appropriate adjustments, they indicate the assessed value, as revised for the limited shore frontage and drainage condition of the lot, is reasonable.

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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Jack G. and Bernadette A. Garneau, 29 Swain Road, Gilford, New Hampshire, 03249, Taxpayers; Wil Corcoran, Assessor, Town of Gilford, 47 Cherry Valley Road, Gilford, New Hampshire, 03246; and Chairman, Board of Selectmen, Town of Gilford, 47 Cherry Valley Road, Gilford, New Hampshire, 03246.

Date: May 8, 2003

Anne M. Bourque, Deputy Clerk