

Doris T. Decelle

v.

Town of Gilford

Docket No.: 20454-03PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$322,000 (land \$200,500; building \$121,500) on Map 222, Lot 016-011, for a cottage condominium at Sunburst Cottages (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence; the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property is a seasonal cottage converted to a condominium that may only be utilized during the warmer months;
- (2) the Property's assessment increased substantially more than the nearby condominiums in the Clearwater Cove Condominium Association; and
- (3) the Signorine property in the Bluewater Bay Condominium Association should have been assessed higher than the Property.

The Town argued the assessment was proper because:

- (1) the Property was completely renovated in 1987;
- (2) the Property has a superior location compared to the Signorine property; and
- (3) a comparable sales analysis indicates the Property is not over assessed.

Board's Rulings

The board finds the Property was not disproportionately assessed.

Assessments must be based on market value. (see RSA 75:1). The Taxpayer did not present any creditable evidence of the Property's market value. To carry her burden, the Taxpayer should have made a showing of the Property's market value. This value would then have been compared to the Property's assessment and the general level of assessment in the Town. See e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 803 (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 Taxpayer had two primary issues concerning the Property's assessment: 1) the substantially larger increase in the assessment of the Property compared to other similar properties in the nearby Clearwater Cove Condominium Association; and 2) the discrepancy

between the assessments of the Signorine property located at Map 222-045-033 in the Bluewater Bay Condominium Association and the Property.

The Taxpayer testified the assessments in the abutting Clearwater Cove Condominium Association increased at a much lower rate than those in the Sunburst Condominium Association where the Property is located. In support the Taxpayer provided a table, in Section F of her appeal form, comparing the increases between the two condominium complexes which abut each other. Responding to the Taxpayer's arguments, the Town testified a mistake had been made at the Town's assessing office when the new assessments for the two abutting condominium complexes were entered into the assessing data base. The land and building components of the assessments for all properties, including the Taxpayer's, in the Sunburst condominium complex, were increased. In the Clearwater Cove Condominium complex, however, only the building components of the assessments were increased while the land component increases, were inadvertently omitted and allowed to stay the same as with the previous assessment. Further, the Town testified there had been several personnel changes in the Town's assessing office and the inadvertent mistake was not discovered until the subsequent year. This evidence that certain similar properties may have been underassessed, however, does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987). The courts have held that in measuring tax burden, market value is the proper yardstick to determine proportionality, not just comparison to a few other similar properties. Id. While the board acknowledges the Taxpayer's frustration with this sequence of events, the board finds such actions on the part of the Town do not warrant an abatement of the Property's assessment.

Regarding the Taxpayer's comments concerning the Signorine property, the board finds this condominium's location in the Bluewater Bay Condominium Association complex, sited on

a narrow, steep lot with the individual units being “crunched together” is different from the Property’s location, which has a more park-like setting with mature trees and more open space. This finding is supported by a review of the assessment-record cards for the Bluewater Bay Condominium Association, submitted by the Town as Municipality Exhibit C, that indicated the Town applied a lower land value base rate to that complex than it did to the Taxpayer’s. The board finds this to be some evidence the Town took into account the differences between the common land of the two associations that are reflected in the overall assessments. Further, the Property was renovated in 1987 while the Signorine property has more depreciation applied to its building given its age (1930).

The Taxpayer’s assertion that the Property had been disproportionately assessed compared to other properties within the Sunburst Association was rebutted by the Town on page 30 of Municipality Exhibit B that showed the three other condominium units that have close proximity to the lake, similar to the Property, all had comparable, substantial assessment increases. In fact, all three received greater increases to their overall assessments on a percentage basis. The Town testified that in order to keep pace with the escalating market values of properties comparable to the Taxpayer’s, it has been necessary, beginning in 2003, to make significant increases to the assessments of similar former cottage colony condominium complexes and this methodology has been employed consistently throughout the Town.

Further, in support of the Town’s position that the assessment was not excessive, the Town submitted, as part of Municipality Exhibit D, a Comparable Sales Analysis Grid that utilized three comparable sales to estimate the Property’s market value. Upon review during the hearing, the Town suggested comparable sale #1 had some unique pricing and selling features that were not fully accounted for during the Town’s initial research and should be disregarded.

The board finds, however, the remaining two comparable sales in the analysis on page 12 provide adequate support for a market value estimate significantly higher than that suggested by the Taxpayer during the hearing (\$275,000). Multiplying the Town's market value estimate of approximately \$400,900 by the agreed upon level of assessment determined by the DRA, of 91%, indicates the Property is not overassessed ($\$400,900 \times 0.91 = \$364,819$).

For all these reasons, the board finds the Taxpayer failed to prove the Property was disproportionately assessed and the appeal for abatement is denied.

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(f). 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 a copy of the foregoing Decision has this date been mailed, postage prepaid, to Doris T. Decelle, 161 Dockham Shore Road Sunburst Condos - #11, Gilford, NH 03249, Taxpayer; and Chairman, Board of Selectmen, Town of Gilford, 47 Cherry Valley Road, Route 11A, Gilford, NH 03249.

Date: December 5, 2005

Melanie J. Ekstrom, Deputy Clerk