

Jean M. and Harold S. Martin

v.

Town of Gilmanton

Docket No.: 24906-09PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2009 assessment of \$262,600 (land \$126,400; building \$136,200) on Map 108/Lot 04 (“Lot 4”), a single family home with a guest house on 0.94 acres. Lot 4, however, is only a part of the Taxpayers’ entire estate: they also own, but did not appeal, the \$94,300 assessment on Map 108/Lot 25 (“Lot 25”) a vacant waterfront parcel on 0.12 acres. The “Property” therefore consists of both Lot 4 and Lot 25. 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 Property’s total 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). We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment on Lot 4 was excessive because:

- (1) Lot 4 and Lot 25 are divided by Crystal Lake Road and Lot 25 is small, narrow and unbuildable (as shown on Taxpayer Exhibit No. 2-A);
- (2) heavy traffic along Crystal Lake Road affects the quiet enjoyment of the Property and restricts the view from Lot 4 (as shown on Taxpayer Exhibit No. 2-B) and the view is inferior to the neighboring properties' views (as shown on Taxpayer Exhibit No. 2-C);
- (3) the land portion of Lot 4 is assessed at a higher condition rate than comparable land with similar waterfront acreage;
- (4) Lot 4 is subject to wetland restrictions and water runoff from a hill floods the dirt basement of the single-family house every spring (as shown on Taxpayer Exhibit No. 2-D);
- (5) the "original" septic system is inadequate for year-round service;
- (6) the buildings (camp and cottage) on Lot 4 have several physical and functional deficiencies, have been inaccurately measured and thus are improperly assessed (as shown on Taxpayer Exhibit No. 2-E and 2-F);
- (7) the Taxpayers use a neighbor's driveway because Lot 4 does not have a driveway; and
- (8) the assessment should be reduced by \$51,000.

The Town argued the assessment was proper because:

- (1) the Property is deeded as a single lot but while the Property is divided by Crystal Lake Road, the Town has assessed it as two lots because its highest and best use is as one economic unit;
- (2) the Property is one of a subset of properties that are split by Crystal Lake Road with the improvements on the non-waterfront side of the road and the waterfront on the other side of the road; and this subset of properties are all assessed in the same manner as the Property (Lot 4 and Lot 25);

- (3) the Taxpayers are only appealing the assessment of Lot 4 but have failed to prove the Property as a whole (Lot 4 and Lot 25) is disproportionately assessed;
- (4) the Taxpayers have cited several physical and functional deficiencies in the assessment yet have failed to show how these deficiencies affect the total assessed value;
- (5) the traffic and road impact has been taken into account in the assessment;
- (6) the land condition factor on Lot 4 takes into account the less obstructed view of the lake from the primary dwelling on the lot; and
- (7) the Taxpayers have failed to carry their burden and the Town requests the appeal be dismissed.

The parties agreed the level of assessment was 96.1% in tax year 2009, the median ratio calculated by the department of revenue administration.

Board's Rulings

The Town requested the board dismiss the appeal (Municipality Exhibit A at p. 8) "due to the Taxpayers not having carried their burden." In light of the additional relevant evidence presented by the Town on the issue of proportionality, however, the board finds it is more reasonable to consider the evidence as a whole and decide the appeal on the merits rather than grant the Town's request to dismiss. Based on the evidence, the board finds the Taxpayers failed to prove Lot 4 was disproportionately assessed for the following reasons.

First, the Taxpayers only appealed a portion of their entire estate which, as shown in the August 30, 1943 deed (see Municipality Exhibit A at Tab A1), consists of one lot. The deed indicates the bounds are as follows:

Commencing at the northwest corner of the lot on the road at a stake, thence northerly to a stake and stones; thence on a stone wall westerly to land formerly owned by Ann C. Knowles, occupied by Stella Colbath; thence bounding on said Knowles land to the road

aforesaid; thence across said road to Crystal Lake, so-called, at highwater mark; thence on said lake to a point opposite the first mentioned bound; thence across said road to the bound begun at, ... (Emphasis added.)

The Town, however, has assessed the Property, consistent with similarly situated properties along Crystal Lake, as two separate lots because the Property is divided by Crystal Lake Road. The waterfront portion of the Property (Lot 25) contains 0.12 acres and is unimproved and the non-waterfront portion of the Property (Lot 4) contains 0.94 acres with improvements consisting of a camp and a cottage.

The Taxpayers asked the board to only consider the assessment on Lot 4 and ignore the assessment of Lot 25. In determining whether an abatement is warranted, the board must look at the Property's value as a whole because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). In this case, the entire estate is one lot which, for assessment purposes, comprises Lot 4 and Lot 25. Even if the Taxpayers wish to challenge Lot 4's assessment, the Taxpayer still has the burden of proving the aggregate value of the Property as a whole (Lot 4 and Lot 25) is disproportional and the total assessment is excessive in order to obtain an abatement. Appeal of Walsh, 156 N.H. 347, 356 (2007); Appeal of City of Lebanon, 161 N.H. 463, 469 (2011) (A taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the assessment of property generally in the city.)

To succeed on a tax abatement claim, the Taxpayers have the burden of proving by a preponderance of the evidence that they are paying more than their proportional share of taxes. Further, justice requires that an order of abatement not relieve the Taxpayers from bearing their share of the common burden of taxation, notwithstanding any errors of law or fact pertaining to

how the assessment was made. Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003).

Simply because the Town has assessed the Property as two lots does not negate the fact the Property is deeded as one lot divided by Crystal Lake Road. In order for the board to determine if an abatement is warranted, the board must consider the assessments on both Lot 4 and Lot 25. Therefore, the burden is on the Taxpayers to show the assessments of the Property as a whole is disproportionate.

Second, the Taxpayers did not present any credible evidence of the Property's market value. To carry their burden, the Taxpayers should have made a showing of the Property's market value. This value would then have been compared to the Property's assessments 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 Corp., 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

Finally, the Taxpayers raised concerns about certain errors in the assessment of Lot 4. However, the Taxpayers did not show these errors resulted in disproportionality. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant." Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985), quoting Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205 (1899).

For all these reasons, the board finds the Taxpayers failed to prove Lot 4 was disproportionately assessed and the appeal is denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") 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(g). 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Jean M. and Harold S. Martin, 80 Tewksbury Street, Andover, MA 01810, Taxpayers; Chairman, Board of Selectmen, Town of Gilmanton, PO Box 550, Gilmanton, NH 03237; and George Hildum, 2 Sanborn Road, Concord, NH 03301, Contracted Assessing Firm.

Date: 8/2/11

Anne M. Stelmach, Clerk