

**Wayne S. Zold**

**v.**

**Town of Gilmanton**

**Docket No.: 25198-09PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2009 assessment of \$347,900 (land \$180,500; building \$167,400) on Map 133/Lot 01, a single family home on 1.370 acres (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) comparing the 2009 assessment to the 2004 assessment indicates a substantial difference in the land value of the Property; in fact, neighbors on either side of the Property had a 50% increase in their land assessment when the Property’s increase was 70%;

(2) four licensed real estate agents estimated the average value of the Property to be \$300,000 (Taxpayer Exhibit No. 1);

(3) the Property does not have a buffer from the adjoining association beach; there is constant noise, occasional fireworks and late night parties and garbage strewn on the beach; and

(4) the land condition factor should be 250, not 275.

The Town argued the assessment was proper because:

(1) the Town underwent a statistical valuation update in 2009 and the Property has been assessed consistently with all other properties in the municipality;

(2) none of the four real estate agents' estimates of value are appraisals and they cannot be considered reliable estimates of the Property's market value as of April 1, 2009;

(3) the Property has one of the nicest lots in terms of usable land, quality and quantity of water frontage and landscaping and has greater grandfathered transmissible rights than the two neighboring properties which need to be recognized and accounted for in valuing the Property; and

(4) therefore, no abatement is warranted.

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**

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed.

The Taxpayer argued the land value portion of the assessment increased significantly from its 2004 assessed value. The board finds it can give no weight to this argument as increases from past assessments are not evidence a Taxpayer's property is disproportionately assessed

compared to other properties in general in the taxing district in a given year. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). Further, in making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. The supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. Id. Even if a taxpayer wishes to challenge only one component of the assessment, such as the land value or the building value, the taxpayer still has the burden of proving the aggregate value of the Property, as a whole, is disproportional and the total assessment is excessive in order to obtain an abatement. Appeal of Walsh, 156 N.H. 347, 356 (2007).

Assessments must be based on market value. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (2003). In order to prevail in a tax abatement appeal, the taxpayers have the burden of proving the market value of the Property as of the assessment date was less than the assessed value adjusted by the level of assessment in the Town (96.1%). The board has the discretion to evaluate and determine whether any piece of evidence is indicative of market value. Cf., Society Hill at Merrimack Condo.Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); and Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). The Taxpayer submitted four estimates of value from licensed real estate agents and asked the board to rely on those estimates of value in making its determination. The board finds these estimates lack weight for the following reasons.

1) The estimate of value prepared by Jeremy Avery of Ganong Real Estate "Avery Analysis" dated August 6, 2010 was based on an "educated guess" because Mr. Avery did not see the Property and based his opinion on his "assumption" that homes in Gilmanton are selling for slightly less than their assessed value. The Avery Analysis included six properties (three of

which were non-waterfront) that sold between March 15, 2010 and September 14, 2010 and one property listing. Given that Mr. Avery did not inspect the Property and did not adjust the comparable properties' selling prices for dissimilarities between the sales and the Property and merely based his estimate of value on an educated guess, the board cannot give any weight to this analysis.

2) The comparative market analysis prepared by Jason Houle of Exit Lakeside Realty Group ("Houle Analysis") was undated and included a listing of one property in Barnstead and nine sales in Barnstead, Tilton and Sanbornton. Mr. Houle did not do any type of comparison of these sales to the Property and simply averaged the sale prices to arrive at an estimated listing price for the Property thus the board also gives no weight to this analysis.

3) The February 9, 2010 opinion of value of Jacalyn Dussault of New Hampshire Colonials Realty ("Dussault Opinion") consisted of listing sheets of 12 properties (seven listings and five sales). Ms. Dussault stated in her letter to the Taxpayer that she was providing a "limited valuation study" and the study was "not an appraisal." The Dussault Opinion provided "both high and low estimates of market values" with indications of a low of \$300,000 and a high of \$330,000 yet provided no analysis to adjust for differences between the Property and the for sale or sold properties. The Town analyzed the sales and listings in the Dussault Opinion and found the assessments of these properties, when compared and adjusted to the Property for differences in size, location and other features, indicated they were market based and supported the Town's assertion the assessment of the Property was arrived at using the same methodology used in assessing other properties in the Town. This testimony is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

4) A January 22, 2011 comparative market analysis prepared by William Ryan (“Ryan Analysis”) reviewed three “similar” properties in the area that recently sold. Of the three properties, only one was in Gilmanton (96 Lakeshore Drive), the others are located in Barnstead (363 North Barnstead Road) and New Durham (47 Main Street).

- 96 Lakeshore Drive consists of two lots subdivided by a road with the house on the non-waterfront side of the road. The house has a minor and obstructed view of the lake and the access to the lake is across the street via a moderate to steep descent. Further, the waterfront lot is not directly in front of the house lot and the lots overlap by only approximately eight feet. Mr. Ryan did not account for these differences when comparing this property to the Property.
- The Town’s evidence supports its assertion that 363 North Barnstead Road property is significantly inferior in several aspects to the Property and these differences were not taken into account in the Ryan Analysis. For instance, the sale property’s location is inferior and its water frontage is along a narrow inlet fed by a stream that drains into the lake. Further, the drainage along the front of the lot is via two culverts, a drainage ditch along the frontage drains into the inlet then past the lot’s water frontage and most of the frontage is on a narrow inlet with only approximately 20 feet cleared.
- The board concurs with the Town that 47 Main Street is not comparable to the Property. This property is located on an inferior water body, the use of the property has historically been commercial and mixed use and the pond frontage located at the rear of the lot is “wooded and of low quality and desirability.”

Based on the Town's evidence, the board finds the comparables used by Mr. Ryan are of significantly inferior utility and desirability to the Property and gives no weight to the Ryan Analysis.

To the extent the Taxpayer argued an adjustment should be made to the Property as a result of the association beach, which does not have unlimited public access and is subject to control by the association members, the board finds no evidence to support an adjustment to the assessment is warranted.

Last, the board finds the Property has grandfathered rights not available to the neighboring properties which enhance its value. The Property's physical attributes are superior in terms of view, water access, lawn area and quality of water frontage and thus no condition adjustment is appropriate to the Property.

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).

Wayne S. Zold v. Town of Gilmanton

Docket No.: 25198-09PT

Page 7 of 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: Wayne S. Zold, 123 Ridgewood Drive, Gilmanton, NH 03237, Taxpayer; 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: 7/26/11

---

Anne M. Stelmach, Clerk