

Rita M. and Richard G. Werner, Sr.

v.

City of Franklin

Docket No.: 5945-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1989 assessment of \$85,000 (land, \$56,700; buildings, \$28,300) on 623 Lake Shore Drive (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- the camp has no foundation, sets on piers;
- there is no heating system, the chimney is a "dummy" only, with no liner of flue;
- there is no well (water taken from lake); bottled water for drinking;
- there are no hardwood floors (masonite);
- the ell is a storage shed, not living space (partial extension of bathroom);

Rita M. and Richard G. Werner, Sr.

v. City of Franklin

Docket No.: 5945-89

Page 2

- Cornwell property is a comparable property;
- 112 shoreline footage is partially unusable because of algae and lily pads;  
and
- fair market value on April 1, 1989 was \$45,000.

The City argued the assessment was proper because the subject property is waterfront property. Comparable waterfront properties used were Orciani, Duncanson, Lowe. Heating needs adjustment for electric appliance heaters. Waterview properties are valued in the \$50,000 to \$79,000 range.

Based on the evidence, we find the correct assessment should be \$80,400 (land \$26,500 and building \$53,900). This assessment is ordered because the Town indicates a 5% adjustment is appropriate for land as a result of "lake water source" and a new \$26,500 assessment on the building to correct the heating charge.

The board finds the Taxpayers' Property as adjusted is not overassessed. However, there was evidence indicating certain surrounding properties may have been underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard

Rita M. and Richard G. Werner, Sr.

v. City of Franklin

Docket No.: 5945-89

Page 3

yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., Id.

Rita M. and Richard G. Werner, Sr.

v. City of Franklin

Docket No.: 5945-89

Page 4

If the taxes have been paid, the amount paid on the value in excess of \$80,400 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Rita M. and Richard G. Werner, Sr., Taxpayers; Chairman, Board of Assessors of Franklin; and Scott Bartlett, MMC.

Dated: July 22, 1992

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Valerie B. Lanigan, Clerk

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