

Robert C. Fitzpatrick Heirs and Mary A. Fitzpatrick

v.

Town of Kingston

Docket No. 6271-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$75,500 (land, \$56,000; building, \$19,500) on their real estate, consisting of a seasonal camp on a 10,807 square foot lot at 33 Great Pond Road (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 they were disproportionately taxed.

The Taxpayers argued:

- (1)the camp is strictly for seasonal use - not insulated, no heat, sits on railroad ties, etc.;
- (2)the lot is very small and quite ledgy, necessitating a holding tank in lieu of a septic system;
- (3)the Taxpayers' tax bill increased from approximately \$400 to \$1400 in one year;
- (4)the cottage was torn down in 1990 due to termite damage and general poor condition of building; and
- (5)the Taxpayers, for an annual fee, have access to a small common beach on Kingston Lake.

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The Town submitted a spread sheet comparing the Taxpayers' property to three comparable properties and copies of the assessment record cards of the comparable properties.

The Town argued the Midland Realty Trust property was most comparable as to size and condition of improvements and size of lot. The Town feels the Property is overassessed especially in its building component, but is uncertain as to what would be an appropriate assessment.

Based on the evidence we find the correct assessment should be \$59,000 (land, \$56,000 and building \$3,000). This assessment is based upon the Taxpayers' testimony as to the condition of the cottage and the fact that it was torn down and replaced in 1990. The cottage's contributory value to the Property was as minimal salvage value and temporary use value. The board rules that the proper building value for 1989 was \$3,000.

If the taxes have been paid, the amount paid on the value in excess of \$59,000 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Robert C. Fitzpatrick Heirs and Mary A. Fitzpatrick, taxpayers; Chairman, Selectmen of Kingston, and Scott W. Bartlett, Appraiser for M.M.C., Inc..

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Melanie J. Ekstrom, Deputy Clerk

Date: February 21, 1992

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