

Mary L. Lary (deceased)

v.

Town of Alton

Docket No. 6384-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$120,800 (land, \$93,200, buildings, \$27,600) on her real estate consisting of a seasonal cottage on a .18-acre lot on Spring Street (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer failed to carry this burden and prove any disproportionality.

The Taxpayer argued the assessment was excessive because:

- 1) her access to Lake Winnepesaukee is across state land accompanying Route 11 and is by permission only; and
- 2) the lot is only one half usable due to its topography.

The Town argued the assessment was proper because:

- 1) while the Taxpayer has no fee interest in the access to the lake, her license to access the lake is a taxable real estate interest; and
- 2) the sales of cottages with deeded rights indicated a market value

of \$159,000 to \$245,000.

We find the Taxpayer failed to prove her assessment was disproportional. We also find the Town supported the Property's assessment.

The board finds that the Taxpayer has a right by continuous use to access the lake across the State of New Hampshire's land. (See Exhibit TN-A.)

The board struggles, however, with the issue of what is the proper value for the Taxpayer's license to use the waterfront. The sales of properties with similar rights have not occurred to serve as market bench marks. Therefore, good judgment must be applied to the sales that do exist and adjust for the differences. "Given all the imponderables in the valuation process, "[j]udgment is the touchstone.'" Public Serv. Co. v. Town of Ashland, 117 N.H. 635, 639.

The Taxpayer's right is not as unclouded, nor as valuable, as a deeded right to the water or fee interest in land on the water and therefore should be valued less than those properties. The evidence of sales of similar cottages with deeded rights to the lake (Exhibit TN-C) is the best indication of the value of the next level of water-access rights. Those sales ranged from \$159,000 to \$245,000, with most of the sales around \$165,000. By comparison, then, the Taxpayer's assessment of \$120,800 considering the view

of the lake afforded by the lot's topography and a license to access the water is reasonable and proportionate, given the evidence available.

Therefore, the request for abatement is denied.

SO ORDERED.

August 6, 1991

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin

Ignatius MacLellan, Esq.

I certify that copies of the within decision have been mailed this date, postage prepaid, to Mary L. Lary, the Taxpayer, and to the Chairman, Board of Selectmen, Town of Alton.

August 6, 1991

Brenda L. Tibbetts, Clerk