

Ann E. McCoubrey and M. Jean McCoubrey

v.

Town of Alton

Docket No. 6412-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$219,100 (land, \$160,900; buildings, \$58,200) on Map 35, Lot 51, Route 28A, Alton Bay. 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 the assessment was excessive because the subject property was originally part of a cabin colony which has created a variety of incurable problems. The cottage is located partially in the State's right-of-way. Three abutters have deeded easements over the subject property. A sewer line from the Blais property crosses the subject lot. Because of limitations of seasonal water and sewer, no future year-round use is possible. A holding tank precludes the use of dish- or clothes-washing machines and severely limits showers and toilet flushings.

The Town argued the assessment was proper based on three comparable properties which have certain physical limitations. The Town stated an adjustment was made "amounting to \$63,100 to address the numerous encroachments that exist," with no further breakdown. The board finds the Town's comparables lacking in true comparability.

The board further finds the main pier was incorrectly measured by the Town. Mr. J. P. Estey, the board's inspector, reports the dimensions to be 24 feet by 28 feet (not 24 feet by 36 feet). Using the Town's \$22-per-square-foot cost figure, the total depreciated value of the main dock is \$11,090. Since the Taxpayers only own a one-half interest, their share would be \$5,545.

Based on the evidence, including the board's inspector's report, we find the correct assessment should be \$158,100 (land \$120,000 and building [and improvements] \$38,100). The board finds that a buyer could have real difficulty obtaining a mortgage from a lending institution because of the fact that the cottage is partially in the State's right-of-way. This assessment is computed as follows:

\$219,100	original total assessment
<u>-14,300</u>	incorrect pier charge
\$204,800	
<u>+ 5,545</u>	correct main pier charge
\$210,345	
<u>x .75</u>	(depreciation factor right-of-way and easement)
\$158,100	

If the taxes have been paid, the amount paid on the value in excess of \$158,100 shall be refunded with interest at six percent per annum from date paid to refund date. The Town should ensure that the proper value for a one-half interest in the main pier (24 feet by 28 feet) is assessed to Maguire,

across Route 28A. The subject property is so unique and so acutely encumbered

by easements and rights-of-way as to present no danger of a "ripple effect" to other abutting properties as a result of this substantially reduced assessment.

SO ORDERED.

August 16, 1991

BOARD OF TAX AND LAND APPEALS

—

George Twigg, III, Chairman

Ignatius MacLellan, Esq.

I certify that copies of the within decision have been mailed this date, postage prepaid, to Ann E. and M. Jean McCoubrey, the Taxpayers, and to the Chairman, Board of Selectmen, Town of Alton.

August 16, 1991

Brenda L. Tibbetts, Clerk