

Robert H. Howard and Mary G. Howard

v.

Town of Kingston

Docket No. 7624-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$97,600 (land, \$59,800, buildings, \$37,800) on their real estate at Four Pennimans Grove Road, consisting of a camp on a 8,712 square foot lot on Powwow Pond (the Property). The Taxpayers failed to appear, but consistent with our Rule, TAX 102.03(g), the Taxpayers were not defaulted. This decision is based on the evidence presented to the board. For the reasons stated below, the appeal for abatement is denied.

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 failed to carry their burden and prove any disproportionality.

The Taxpayers argued in their written submission:

- 1) their taxes increased 200 percent as the result of the revaluation;
- 2) the water front is choked with weeds and is unusable for swimming or boating; and
- 3) the property is assessed more than its market value.

The Town submitted a photo of the Taxpayers' property, a spread sheet comparing the Taxpayers' property with five comparables, copies of assessment record cards for the comparables and a copy of the tax map.

The Town argued the assessment was proper because:

- 1) the Taxpayers' Property has more frontage than the other comparables;
- 2) there was an area of the Taxpayers' pond frontage that was not weedy;
- 3) the Town assessed on a lot basis, not a frontage basis, so no adjustment was made to the lot for the weediness of the frontage;
- 4) most properties have similar water front conditions; and
- 5) the Bean property at 8 Penniman Road sold in March of 1987 for \$105,000.

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

The board inspector's report also supports the Town's assessment. The Town based its base values of property on Powwow Pond on sales, such as the Bean property, of similar properties on Powwow Pond. Thus the low quality of the waterfront is inherent in the Town's base values.

The Taxpayers complained about the high amount of taxes they must pay. The amount of property taxes paid by the Taxpayers were determined by two factors: 1) the Property's assessment; and 2) the municipality's budget. See gen., International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor i.e., the board will decide if the Property was overassessed, resulting in the Taxpayer[s] paying a disproportionate share of taxes. Appeal of Town of Sunapee, 120 N.H. at 217. The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

The Taxpayers did not present any credible evidence of the Property's fair market value. To carry their burden, the Taxpayers must make a showing of the Property's fair market value. This value will then be compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Robert H. & Mary G. Howard, taxpayers; the Chairman, Selectmen of Kingston; and Scott Bartlett, appraiser for M.M.C., Inc.

Melanie J. Ekstrom, Deputy Clerk

Date: February 20, 1992

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