

Maurice F. and Mercedes F. Kelly

v.

Town of Wakefield

Docket No. 7754-89

DECISION

The Taxpayers' appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of Map 68 Lot 9 (.3 acres) \$82,700 (land, \$23,400; buildings, \$59,300); for Map 68 Lot 46 (.31 acres) \$109,600 (land, \$54,500); buildings, \$55,100) on Belleau Lake (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, 2`17 (1985). We find Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) not comparable to other lots in neighborhood;
- (2) assessed too high compared to other lots closer to public beach;
- (3) waterfront lot (46) on private road (no Town maintenance);
- (4) Belleau Lake is man-made, subject to fallen trees/debris; and

(5) value of lot 9 should be \$50,000, lot 46 should be \$89,000 in April of 1989.

The Town argued the assessment was proper because:

- (1) Atwater sale used as comparable; and
- (2) the lake and general neighborhood were better for lot 46 than for the taxpayers' comparables.

Based on the evidence, we find the correct assessment should be for lot 9 - \$85,650 (land, \$26,350; buildings, \$59,300); and for lot 46 - \$104,650 (land, \$49,550; building, \$55,100) for a new combined total assessment of \$190,300. This assessment is ordered because topography and evidence presented on the general market indicated further adjustment was needed to the land.

If the taxes have been paid, the amount paid on the value in excess of \$190,300 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

(s) George Twigg, III, Chairman

(s) Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Maurice F. and Mercedes F. Kelly, taxpayers; and Chairman, Selectmen of Wakefield.

Dated: May 27, 1992

(s) Valerie B. Lanigan, Clerk

Maurice F. Kelly and Mercedes F. Kelly
v.
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ORDER RE REQUEST FOR CLARIFICATION

On July 15, 1992, the board of tax and land appeals (board) received a request for clarification from the Taxpayers as to how their land value on property identified as Map 68, Lot 9, was increased by the decision.

While the Taxpayers' request is technically too late, the board, on its own motion, corrects its decision of May 27, 1992 (decision).

The appealed assessed value for Map 68, Lot 9, was incorrectly stated on page one of the decision as \$82,700 (**land \$23,400**; buildings \$59,300). The actual appealed assessment was \$88,600 (**land \$29,300**; building \$59,300). Apparently the land value for Map 68, Lot 7 (not appealed by the Taxpayer) was inadvertently stated for the land value for Lot 9. The board's ruling of a total abated value of \$85,650 for Lot 9 is proper as the land value was reduced from \$29,300 to \$26,350 to reflect the topography and market data as found in the decision.

Therefore, the board's ruling did not increase the Taxpayers' land value; it actually lowered the value. The proper appealed total of Lots 9 and 46 was \$198,200, and the proper total abated value is \$190,300.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

— George Twigg, III, Chairman

Paul B. Franklin, Member

I certify that copies of the within order have been mailed this day, postage prepaid, to Maurice F. and Mercedes F. Kelly, the Taxpayers, and to the Chairman, Board of Selectmen, Town of Wakefield.

August 13, 1992

Valerie B. Lanigan, Clerk