

George A. Vanderheiden and Sharon E. Vanderheiden

v.

Town of Wolfeboro

Docket No.: 10119-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$861,600 (land \$605,600; building \$256,000) on a 3.8-acre lot with a house in the Embassy Estates (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. 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 disproportionality.

The Taxpayers argued the assessment was excessive because:

1) the reassessment created inequities in the high valuation of the waterfront lots at Embassy Estates compared to comparable waterfront lots in Wolfeboro;

- 2) Embassy Estates has 30 unsold or vacant lots, 8 newly built homes and has been marketed for nearly 4 years, receives no Town water, sewer or plowing, and has no amenities such as private gates, clubhouses or a private beach;
- 3) the house was under construction on April 1, 1990 and was not completed until August, 1990;
- 4) the Property's waterfront, per-foot value was \$1,740, yet much larger lots had an average \$1,133 waterfront, per-foot value and an average \$408,000 assessed value;
- 5) the Chiang-Kai-Shek estate sold in 1992 for \$1.55 million, or \$1,320 per-foot, which is far less than the Property's \$1,740 per-foot value;
- 6) the Town's photographs were as of April, 1992, and the breakwater, dock and landscaping were not present on April 1, 1990;
- 7) Embassy Estates does not consist of luxury mansion homes only -- the house across the street is a cape; and
- 8) the land assessment should be \$514,130, which is based on the average land value of the four comparables utilized including cost of the site improvements and a prestige factor.

The Town argued the assessment was proper because:

- 1) the Property is in the former Chiang-Kai-Shek estate, which adds historical value, and the Chiang-Kai-Shek estate sold at a sheriff's bankruptcy and was not an arm's-length transaction;
- 2) the Embassy Estates are protected by covenants and restrictions to ensure only luxury homes are built in the area;
- 3) Embassy Estates commands the highest waterfront values in Wolfeboro, which is substantiated from Maxfield Real Estates;

- 4) the Property is a large, private lot with 348 feet of waterfront, which provides a panoramic, 180-degree view of Lake Winnepesaukee;
- 5) the Property has extensive landscaping, drainage systems, stone retaining walls and a private sandy beach;
- 6) the Taxpayers comparables do not support overassessment due to various inferior factors, i.e., location, access, topography, size, waterfront or buildings, and the Property is superior to the Taxpayers' comparables;
- 7) comparable, vacant-land sales in Embassy Estates support the land assessment;
- 8) the assessment of the land and building is consistent with similar properties in the neighborhood;
- 9) the home across the street is the smallest in the subdivision, a custom-built cape, and not on the waterfront; and
- 10) the photos submitted reflect the value as of 1990 - in 1991 the value increased due to the completion of the house and a dock was added.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$828,200 (land \$572,200; buildings \$256,000). This assessment is ordered for the following reasons:

1) Although the Taxpayers used comparables in the vicinity of the subject, recent sales within Embassy Estates are more indicative of the value of the Property. Fewer adjustments are required to be made for properties in the development because of its unique qualities. The sales reflect the marketability of the neighborhood.

2) The Town used four comparables in Embassy Estates which sold between August, 1988 to November, 1991. In reviewing these comparables, including the sale of the subject in June, 1988, time adjustments need to be applied to the April 1, 1990 date. The board finds that a condition factor of 9.0 on the subject is high and a factor of 8.5 is more appropriate to create equity among similar properties in the development. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b).

3) Lack of municipal services is not necessarily evidence of disproportionality. As the basis of assessing property is market value, as defined in RSA 75:1, any effect on value due to lack of municipal services is reflected in the selling price of comparables and consequently in the resulting assessment. Barksdale v. Epping, ___ N.H. ___ (December 23, 1992).

The focus of our inquiry is proportionality, requiring a review of the assessment to determine whether the property is assessed at a higher level than the level generally prevailing. Appeal of Town of Sunapee, 126 N.H. at 219; Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982). There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the Municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

If the taxes have been paid, the amount paid on the value in excess of \$828,200 shall be refunded with interest at six percent per annum from date

paid to refund date.

#10119-90, Vanderheiden v. Wolfeboro

Page 5

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3.

The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to George A. and Sharon E. Vanderheiden, Taxpayers; and Chairman, Selectmen of Wolfeboro.

Dated: May 5, 1993

Melanie J. Ekstrom, Deputy Clerk

0005