

Michael and Bette Tuttle

v.

Town of Washington

Docket Nos.: 10121-90PT and 12446-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$122,520 and 1991 adjusted assessment of \$116,460 on a 1.03-acre lot with a house (the Property). For the reasons stated below, the appeals for abatement are denied.

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry this burden and prove disproportionality.

The Taxpayers argued the assessments were excessive because:

- (1) the Town erred by considering several factors in valuing properties on other water bodies without doing the same on this pond;
- (2) the Town erred by adjusting the 1989 front-foot value;
- (3) the Town's figured lake frontage resulted in lots with less lake frontage being over assessed;

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(4) the use of the 100' x 200' standard lot was erroneous because the waterfront lots are not that small and the depth factor was an error; and

(5) the assessment should have been \$90,880.

The Taxpayers presented a report that was reviewed, but we will not reiterate the report here.

The Town argued the assessments were proper because:

(1) they were proportional to other lake property assessments;

(2) the lakefront assessments were updated in 1990 because the Town realized the 1989 revaluation analysis for lakefront properties used earlier sales than the sales used for nonwaterfront properties, resulting in an under assessment of the waterfront properties compared to nonwaterfront properties;

(3) the new front-foot value was arrived at using sales closer to the assessment date and to the sale dates used to reassess other properties; and

(4) the methodology used did not result in overassessment.

The Town presented material to support its arguments and the assessments. Those materials were reviewed but will not be reiterated here.

Board's Rulings

Based on the evidence, we find the Taxpayers failed to prove the Property's assessments were disproportional.

The Taxpayers' main contention in appealing their assessments was that the Town's assessment methodology was flawed for the reason stated in their arguments. The board, however, finds that the Town's system was not flawed. Further, the Taxpayers did not present any market evidence to support their claim of excessive assessment.

The board reviewed in detail the parties' exhibits. In particular, the board finds the Town complied with the requirements of RSA 75:8 by reviewing and correcting the assessments on Ashuelot Pond.

While the board finds the Town's methodology of: a) averaging the resulting front-foot prices of only two sales; and b) calculating the figured frontage by averaging the front and rear lot lines are not commonly accepted appraisal methodologies, those practices did not result in disproportional assessments. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

The board has reviewed the Town's analysis, refiguring it based on triangulating the dimensions of the lots that sold, and finds the resulting difference in assessment when the revised base rates are then applied to the Property is minimal and insignificant. The averaging of front and rear lot lines could cause significant discrepancies in valuation if the configuration of the lots were more irregular than is the norm on Ashuelot Pond. However, because most of the lots are relatively regular around the pond (notwithstanding some slight variation), the difference between averaging and triangulating is minor and insignificant.

The main reason the Taxpayers' appeal is denied is that they presented no market evidence to support their claim that the Town's methodology resulted in disproportionate assessments. On the other hand, the Town's evidence of subsequent sales indicates the assessments were proportional relative to market value. While analyzing the Town's assessment methodology, as the

Taxpayers did, may be helpful in understanding how the market data was analyzed, the critical test is whether an assessment is proportionate to relevant market data. In this case, the board finds the Town presented sales that support the assessment (even if reasonable adjustments for personal property are made), and the Taxpayers presented no market evidence to show the assessment was not proportional.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Michael and Bette Tuttle, Taxpayers; and Chairman, Selectmen of Washington.

Dated: July 28, 1994

Valerie B. Lanigan, Clerk

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