

Kevin G. and Virginia Murphy

v.

Town of Tilton

Docket No.: **10418-90PT**

Decision

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$122,800 (land, \$84,600; buildings, \$38,200) on a .09-acre lot with a cottage (Lot 14); and \$95,200 (land \$57,500; building \$37,700) on a .98-acre lot with a store (Lot 23A). The Taxpayers also own, but did not appeal, Lot 11 assessed at \$16,300 and Lot 15 assessed at \$600. 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 denied on Lot 14 and granted on Lot 23A.

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 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

Page 2

Murphy v. Town of Tilton

Docket No.: 10418-90PT

The Taxpayers argued the assessment on Lot 14 was excessive because:

- (1) the camp's walls and roof are only 2x4 construction and would not meet code and therefore, should not be graded A1;
- (2) Lot 23 is a waterfront lot with a new home and was assessed the same A1 quality as the Taxpayers' lot, yet the Taxpayers' lot consists of a camp on a nonwaterfront lot with a culvert;
- (3) the camp was assessed with carpeting, but there was only remnant carpet tacked down to catch the sand and water;
- (4) after the Taxpayers purchased the lot, an abutter constructed a 6-foot fence obstructing the Taxpayers' view; the Town's comparable Lot 18 is not comparable because Lot 18 has always had the same view; and
- (5) Lot 14 was graded much higher than other superior properties in the Town that have more acreage and better views.

The Taxpayers argued the assessment on Lot 23A was excessive because:

- (1) the Town assessed the building as a store, but the building only serves to house the holding tank that feeds the well to Lot 14;
- (2) the deed reserves the right for three other lot owners to install septic systems on the lot and the state uses the land as water runoff across Route 3 to the lot's culvert; these negative factors were not considered in the assessment;
- (3) the lot was purchased in 1985 for \$25,000 and for the purpose of protecting the Taxpayers' abutting lot; and

Page 3

Murphy v. Town of Tilton

Docket No.: 10418-90PT

(4) although the Town stated they did not consider the lot's commercial use in the assessment, the building's assessment increased from \$1,500 to \$37,700, which proves the commercial use was considered in the assessment.

The Town argued the assessment on Lot 14 was proper because:

- (1) both the Taxpayers' lot and Lot 23 were graded A1 construction, however, Lot 23 was graded as a house with a \$54 base rate and the Taxpayers' lot was graded as a camp with a \$38 base rate;
- (2) the Taxpayers' camp did have remnant carpeting and upon inspection, the carpeting was found to be in average condition;
- (3) all the properties on Murphy Lane were assessed consistently and Lot 18 is identical to the Taxpayers' lot except for building square footage, which accounts for the difference in the assessment; and
- (4) waterfront land values range from \$108,800 to \$119,900, and the Taxpayers' land value is substantially lower because it is not waterfront property, e.g., Lot 6, which is a waterfront lot, sold in July, 1988 for \$173,000 and was assessed for \$154,900.

The Town argued the assessment on Lot 23A was proper because:

- (1) the building was used to sell a variety of lawn ornaments and, therefore, is a store;
- (2) the lot has excellent exposure to Route 3 traffic, which increases its value;
- (3) although the Taxpayers maintain that the Town should have considered the deed reservations and state culvert in the assessment, the Town's assessment did not consider the lot's increased use and utility as a commercial lot and, therefore, the assessment was still equitable; and

Page 4

Murphy v. Town of Tilton

Docket No.: 10418-90PT

(4) the methodology was consistent throughout the Town.

Board Rulings

Based on the evidence, the board finds that Lot 14 is properly assessed at \$122,800, and Lot 23A should be assessed at \$85,750 (land \$53,100; building \$32,650).

Lot 14

The board finds Lot 14 is properly assessed because:

(1) the Taxpayers' arguments of higher grading on the buildings is without merit as their building was classified as a cottage and the property to which they were comparing is classified as a contemporary residence; while both are graded 10% above average, the base square-foot prices are significantly different recognizing their inherent difference in replacement cost;

(2) the Town's adjustments for the view and proximity to water of the Taxpayers' Lot 14 and the Taxpayers' comparables are reasonable based on the evidence submitted including photographs;

(3) the board notes that while there is a fence on the Taxpayers' south boundary line, the Taxpayers enjoy a view of the lake across the several water access strips which are in front of the Taxpayers' cottage;

(4) the sale of Lot 6 in 1988 for \$173,000, while not directly comparable to the Taxpayers' Lot 14, does generally support the assessment of the Taxpayers' Property; and

(5) the Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the

Page 5

Murphy v. Town of Tilton

Docket No.: 10418-90PT

Property's fair market value. This value would then have been 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.

Lot 23A

The board finds that the assessment for Lot 23A should be reduced because:

- (1) the replacement cost of the shed/store at \$113.60 per square-foot is excessive given its quality of construction and its utility;
- (2) the board finds that an additional 10% depreciation to recognize this factor is warranted;
- (3) the Town did not adequately recognize the impact of the State of New Hampshire easements and shared well on this lot; and
- (4) these encumbrances would impact the market value of the Property and therefore the condition factor on Lot 23A should be reduced to .9, reducing the land value to \$53,100 and the total assessment for Lot 23A to \$85,750.

If the taxes have been paid, the amount paid on the value in excess of \$85,750 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1991, 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

Page 6

Murphy v. Town of Tilton

Docket No.: 10418-90PT

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

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Kevin G. and Virginia M. Murphy, Taxpayers; and Chairman, Selectmen of Tilton.

Dated: November 30, 1993

0008

Lynn M. Wheeler, Deputy Clerk