

Lake Horace Recreational Trust

v.

Town of Weare

Docket No.: 10572-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$75,800 (land \$34,100; buildings \$41,700) on a .14-acre lot with a camp (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. After reviewing all Lake Horace appeals, the board decided to hold a hearing to gather further information. The board has reviewed the written submittals and the evidence from the hearing and issues the following decision. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has 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 Taxpayer failed to carry this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Property has limited use resulting from the lot's irregular shape;

(2) the waterfront has large boulders and is part of the dam, resulting in no lake access for swimming;

(3) the Property has a common well which adversely affects the Property's value because potential buyers would prefer their own water supply as opposed to the maintenance and liability of a shared well;

(4) the abutting lot with the same water frontage and better access had only a \$32,000 land assessment, and other lots with 90' to 100' water frontage were assessed between \$12,800 and \$15,500;

(5) a lot with 90' water frontage had an original \$33,600 land assessment, but after the lot sold for only \$11,000 in December, 1990, the land assessment was reduced to \$12,800;

(6) 2.5-acre lots with spectacular views had land assessments of only \$44,500 to \$44,600;

(6) year-round homes on 2.5-acre lots had \$70,000 to \$80,000 building assessments, yet the Property, with a .14-acre lot and a 20' x 24' camp, had a building value of \$41,700;

(7) the insurance company will only insure the Property for \$69,400;

(8) the assessment should be \$60,800;

(9) Avitar's photo of the Property's "beach" is actually the adjacent property's beach, which would have been discovered if the Town had inspected the Property, and the easement which Avitar refers to is the shared dock which sits on the boundary line; and

(10) nonwaterfront properties were chosen to prove that properties are disproportionately assessed in the Town, i.e., after the revaluation,

properties were supposedly assessed at 100% of value, yet waterfront properties are assessed at 110 to 115% of value and nonwaterfront properties are assessed at less than 100% of value.

At the start of the hearings, the Town explained the assessment methodology that was applied to all Town properties and the detail of that methodology as applied to Lake Horace properties. The Town submitted a sales book with photographs and sales and assessment information. The Town argued the assessment was proper because:

- (1) the assessment was based on sales that occurred between April 1, 1988, and April 1, 1990, and these sales were used as a benchmark to value properties for the 1990 revaluation;
- (2) the Property's condition was addressed with a 1.0 condition factor when neighboring lots had condition factors of 2.0, 3.25 and 3.50 -- this factor adequately addressed the proximity of the dam, the limited water frontage, topography, utilities and desirability;
- (3) although the Taxpayer contends he has no water frontage or access, there is a dock on the premises that belongs to the Property and is shared with the adjoining lot by an easement, however, a depreciation was given because the current prevents swimming;
- (4) the Taxpayer's comparables are not comparable because one is an unbuildable lot and two others are vacant lots that were viewed as contiguous to abutting house lots and assessed accordingly;
- (5) the Taxpayer's "back lot" values should not be considered because they are

not waterfront properties and have no views as the Property does;

Page 4

Lake Horace Recreational Trust v. Town of Weare

Docket No.: 10572-90

(6) the common well shared by four properties does not adversely affect the Property's value;

(7) the sale next door was not a qualified sale since it was a foreclosure sale; and

(8) sales 1, 3, 5, 8, 9, 10, 11, 12, 14 and 15 support the assessment.

The board's inspector reviewed the assessment-record card and the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the proper assessment should be \$69,000 (land \$27,300; buildings \$41,700). The inspector adjusted the land assessment to reflect the shared well and dock, the limited water frontage and condition of same, the dam, and the current which prevents swimming. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation. In this case, the board rejects the inspector's report.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property's assessment was disproportional. While there was no sales data that was specifically comparable to this Property's location near the dam, the Town applied a reasonable adjustment and arrived at an assessment using the same methodology used in assessing other properties in Town. This testimony of

consistent methodology is evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

Page 5
Lake Horace Recreational Trust v. Town of Weare
Docket No.: 10572-90

Lastly, the Town's assessment reflects the deficiencies that were noted by the Taxpayer. The Taxpayer's evidence of the insurable value of the Property, which was in excess of the Town's building assessment, further supports that the total assessment is reasonable.

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

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Ronald P. Bouffard, Trustee of Lake Horace Recreational Trust, Taxpayer; and Chairman, Selectmen of Weare.

Dated: September 14, 1993

Valerie B. Lanigan, Clerk

Lake Horace Recreational Trust,
Ronald P. Bouffard, Trustee

v.

Town of Weare

Docket No. 10572-90

ORDER

The "Taxpayers" filed a rehearing motion with the board on September 27, 1993 requesting the board:

- 1) Review the comparability of the Town's comparables, and
- 2) view the taxpayers' property and compare it with the Town's comparables.

The board denies the taxpayers' request for reconsideration.

The board's decision was not based on any specific comparables submitted by either party. The testimony was quite clear that this property had some unique features not typical of most of the other Lake Horace properties. The board's decision found that the Town through its adjustments reasonably accounted for these unique features, as reasonably as anyone can lacking specific market data to quantify the effect on market value by these unique features.

The board, as the taxpayer noted, has time constraints that would preclude a view of the property. However the board notes that both the taxpayer and town

Lake Horace Recreational Trust
Page 2

provided adequate photographs and maps to assist the board in understanding the
unique features of the property.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

I certify that copies of the within Order have this date been mailed, postage prepaid, to
Ronald P. Bouffard, Trustee; and the Chairman, Selectmen of Weare.

Date: October 21, 1993

Valerie B. lanigan, Clerk

0003