

William T. and Lois T. Hunter

v.

Town of Weare

Docket No.: 10722-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$98,800 (land \$76,700; building \$22,100) on a .43-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 granted to the Town's revised \$84,800 assessment.

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).

The Taxpayers argued the assessment was excessive because:

1) the Property's steepness prevents any access except in summer months;

- 2) the building is seasonal and sits on a temporary stone and log foundation and has no septic system, no wall board -- the studs are sawed-off saplings -- and no bathroom (only an outhouse) even though the assessment includes one;
- 3) there have been no improvements to the building since its construction in 1948;
- 4) the Property receives no Town services;
- 5) the Property would never sell for the assessed value, and similar lots in the area have been for sale for two years with no interested buyers;
- 6) the lake is not a "legal lake" but rather an impounded water area;
- 7) a neighboring lot with a year-round residence was assessed at only \$134,600;
- 8) because the Town does not maintain the road, the road's use is seasonal and this affects the value; and
- 9) the assessed value should be \$25,000.

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 acknowledged the assessment should be reduced to \$84,800, which was based on lack of septic system and the cost to cure this deficiency. The Town argued the adjusted assessment was proper because:

- 1) the assessment was based on sales from June, 1988, to May, 1990, with adjustments for size, topography, views, and lack of septic system;
- 2) the steepness was addressed in the assessment;

- 3) a similar, .43-acre lot with a camp was purchased in September, 1989, for \$134,000 and the 1990 assessment was \$132,300;
- 4) a .31-acre lot with a year-round residence was purchased in October, 1989, for \$140,000 and the 1990 assessment was \$136,800, and a .30-acre lot with a year-round residence was purchased in August, 1990, for \$133,000 and the 1990 assessment was \$131,500 -- both lots are steep, access is by a road not maintained by the Town, and both lots have inferior waterfronts than the Property; and
- 5) the assessment does not include a bathroom, but does place value on the potential for a holding tank, which is common on lakefront properties.

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 \$87,300. The inspector adjusted the land assessment -15% to address the steep drive and the inability to have a septic system due to the lot's size. 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.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$84,800. The board concludes no further adjustment is warranted because the Taxpayers did not demonstrate, using market data, why any additional

reduction was warranted.

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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. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

Concerning the issue of the Property being on a non-Town-maintained road, the Town submitted sufficient evidence showing the assessments reflected this factor.

If the taxes have been paid, the amount paid on the value in excess of \$84,800 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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

Concurred, Unavailable for Signature
Ignatius MacLellan, Esq., Member

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CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to William T. and Lois T. Hunter, Taxpayers; and Chairman, Selectmen of Weare.

Dated: September 20, 1993

Valerie B. Lanigan, Clerk

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