

Armin H. and Gisela Langsten

v.

Town of Wolfeboro

Docket No.: 10724-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$84,800 (land \$68,100; buildings \$16,700) on a .30-acre island with a cottage (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 denied.

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 failed to carry this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) large parts of the island are peat and bog and are underwater during the late spring and early summer;

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- 2) the land is only inches above the normal high-water level and floats at high water, and the state had to give permission to place rocks on the shore to prevent erosion;
- 3) a regular cottage permit could not be obtained because of the Property's size and condition, and the present cottage is used primarily for sleeping only;
- 4) the shelter is constructed of 2 x 4's at a cost of \$5,000, the deck cost \$500. and the building is insured for \$4,000; and
- 5) the Board of Tax and Land Appeals arrived at an assessed value of the Property of \$5,300 in 1983.

The Town argued the assessment was proper because:

- 1) the Property's 1983 value does not reflect the April 1, 1990 market value due to a dramatic increase in waterfront property and does not reflect the improvements to the Property since that date;
- 2) the site contains .30 acres which is the measurement at the high water mark, there are areas of peat base which encompass a portion of the lot but the remainder of the land is dry and supports a variety of trees and bushes;
- 3) the Property is improved with a 12 x 14 camp with loft area, a 12 x 16 attached deck, dock area and platform;
- 4) the Property has electricity, telephone and water from the lake;
- 5) the Taxpayers have done site work, including a stone retaining wall;

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6) the value was based at 1/2 the mainland value with adjustments to address size and access, and a comparable mainland property with less shore frontage had a \$194,500 land assessment; and

7) the assessment was consistent with similar properties and considered the site differences such as building quality, lack of plumbing and accessibility.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove disproportionality. The board is not obligated or empowered to establish a fair market value of the Property. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine whether the assessment has resulted in the Taxpayers paying an unfair share of taxes. See Id. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975).

The Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v Town of Bedford, 122 N.H. 187, 189-90 (1982).

The Taxpayers did not present any credible evidence of the

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Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the 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.

The Taxpayers argued the Property should be assessed at the same value as the 1983 assessment. No evidence was offered to support that value for 1990.

The board's inspector reviewed the file and assessment-record card and filed a report with the board. This report concluded the Town's adjusted assessment was proper. Mr. Estey is the same inspector who reviewed the Property for the Board of Tax and Land Appeals for the 1983 tax year.

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

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Armin H. and Gisela Langsten, Taxpayers; and Chairman, Selectmen of Wolfeboro.

Dated: May 5, 1993

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Melanie J. Ekstrom, Deputy Clerk

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