

Estate of Edna M. Allen

v.

Town of Wolfeboro

Docket Nos.: 10734-90 and 12669-91 PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 combined assessments of \$9,600 on Lots 43 and 44, two vacant, .11-acre lots (the Property). The Taxpayer 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 appeals for abatements are denied.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer 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 assessments were excessive because:

- 1) the lots are wet, especially in April and May, and the wetness resulted in the state denying septic system approval in 1971-1972;
- 2) an appraiser estimated a March 1987 combined value of \$7,000;
- 3) the Town's assessments were 52% higher than fair market value;

Page 2

Allen v. Town of Wolfeboro

Docket Nos.: 10734-90 and 12669-91 PT

- 4) an appraiser estimated combined values of \$6,300 (1987), \$7,000 (1989) and \$4,200 (1992) (The board did not consider the Taxpayer's 1993 appraisal because it was too remote in time and was submitted in a rebuttal.);
- 5) the Town's comparables are not comparable to the Property because the Town's comparables are on better roads;
- 6) the Town comparables cannot be considered since the Town did not indicate whether the comparables had septic system approval or not; and
- 7) repeated unsuccessful attempts were made to sell the Property at or below the assessment.

The Town argued the assessments were proper because:

- 1) the Taxpayer's appraisal estimated the Property's March 1987 value and does not reflect the 1990 value;
- 2) the Taxpayer's appraiser's three comparables are not comparable because two are located out-of-town and the one located in the Town is inferior to the Property;
- 3) the Property is within walking distance of Lake Wentworth State Park and Beach;
- 4) the Property has 100 feet of combined road frontage, is only 100 feet from Route 109, and the lots are level with electricity and telephone utility;
- 5) the Property's highest and best use, which is to combine the lots to form one buildable lot and construct a single-family home, is reflected in the assessment; and
- 6) two comparable lots with superior access were assessed at \$6,000 each, and a vacant, 1.09-acre lot was assessed at \$24,400 and sold in June, 1989 for

\$30,500.

Page 3

Allen v. Town of Wolfeboro

Docket Nos.: 10734-90 and 12669-91 PT

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 assessment was proper, however, the inspector recommended reducing the assessment by 50% if the Property was unbuildable. 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. The board did not rely on the inspector's report.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the assessments were disproportional. The Taxpayer placed great reliance on the 1987 estate appraisal. The Taxpayer indicated the appraisal was time adjusted to 1989 and 1992. The 1987 appraisal, and the time adjustments thereto, were insufficient. Specifically, the 1987 appraisal was not a full narrative appraisal, which made reviewing and relying on the appraisal difficult. Additionally, the appraiser did not support, in any reviewable way, the time adjustments.

The Taxpayer also did not submit any comparative assessment information. If this information had been submitted, the board could have reviewed the Properties' assessments with other Town assessments.

Finally, the Town submitted sufficient information to support the assessments.

Page 4

Allen v. Town of Wolfeboro

Docket Nos.: 10734-90 and 12669-91 PT

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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Lloyd E. Allen, II, Petitioner of the Estate of Edna M. Allen, Taxpayer; and Chairman, Selectmen of Wolfeboro.

Dated: July 15, 1993

Valerie Lanigan, Clerk

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ORDER

This order responds to the "Taxpayer's": 1) request for an extension to file a rehearing motion; and 2) request for clarification. Both requests are denied.

Because the extension request is dependent upon the clarification request, the clarification request will be discussed first. The board finds no clarification is required because the decision was sufficiently clear. The decision, denying the Taxpayer's appeal, was based on the Taxpayer's failure to carry its burden of proving disproportionality. The clarification request was based upon the erroneous assumption that it was the board's or the board inspector's responsibility to make the Taxpayer's case. This was the Taxpayer's burden. As stated in the decision, the Taxpayer's appraisals were insufficient to establish a market value, and the Taxpayer did not submit any

comparable assessment information.

Concerning the board inspector's report, the decision clearly described the limited report filed by the inspector. The board did not rely upon the inspector's report because:

Page 2
Allen v. Town of Wolfeboro
Docket Nos.: 10734-90 and 12669-91PT

1) the inspector has retired from the board and was not available to answer any board questions or questions from the parties; and 2) the report does not contain sufficient information to support the inspector's conclusion.

The extension request is denied for two reasons: 1) the board is prohibited from granting extensions of statutory deadlines, see Daniel v. B & J Realty, 134 NH 174, 176 (1991); and 2) the clarification request has been denied.

The bottom line is that the Taxpayer failed to prove disproportionality and this failure cannot now be cured.

SO ORDERED.

BOARD OF TAX AND

LAND APPEALS

MacLellan, Esq., Member

Ignatius

Member

Michele E. LeBrun,

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed

this date, postage prepaid, to Lloyd E. Allen, II, Petitioner of the Estate of Edna M. Allen, Taxpayer; and Chairman, Selectmen of Wolfeboro.

Dated: September 2, 1993

Valerie B.

Lanigan, Clerk

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