

John H. and Cynthia J. Jenkins

v.

Town of Wolfeboro

Docket No.: 10786-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$426,100 (land \$365,000; building \$61,100) on a 1.33-acre lot with 2 cottages (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) the cottages are seasonal, i.e., they have no insulation, foundation, water or heat, Property's only access is by a dead-end dirt road, and the buildings violate present zoning regulations;

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2) the Property is steep, has ledge, a rocky shoreline, and is on the shady side of Winter Harbor;

3) the Property's per-square-foot price averages higher than similar properties, and the adjusted land assessment is \$2,626 per-square-foot of frontage when the average is only \$1,938 per-square-foot;

4) an opulent, year-round home sold in 1990 for \$375,000 (Burack), which the Town failed to consider in setting the values, and this sale was not a distress sale according to George Hutchins of Yankee Peddler Real Estate Agency who handled the sale;

5) a 1.81-acre lot with 310 feet of frontage had a \$244,200 land assessment and sold for \$410,000 in 1990;

6) the 1.1 acre, Wyanoke Beach area is assessed at \$61,000 -- this common beach lot is taxed separately and taxes are paid by the association and, therefore, should not be reflected in the land assessment;

7) other properties across Winter Harbor (Muir and Bentley) have more land and lower assessments;

8) the Property was purchased in 1978 for \$84,000 and the only changes since purchase have been painting and replacing the septic system, resulting in the loss of useable land;

9) the land value has increased 600% in 10 year's time;

10) the land assessment should be \$300,000;

11) the Town's comparables are in Embassy Estates, an exclusive neighborhood, and the Property is located in an area with heavy boat traffic and with intensive public use at one end due to the public beach and a boat launch at

the other end; and

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12) the assessors have attributed more value to the land because the lot has two cottages on it.

The Town argued the assessment was proper because:

- 1) the Property is located in the exclusive Wolfeboro Neck area in a subdivision known as Wyanoke Harbor, which offers such amenities as common nature trails, tennis courts and a sandy beach, and the neighborhood is mainly developed with quality, custom-built luxury homes and is considered a prime, desirable location;
- 2) the assessment was based on sales used during the revaluation adjusted to reflect the Property's size, topography, location, waterfront condition and frontage;
- 3) land sales on Wolfeboro Neck, specifically Embassy Estates, are admittedly superior, but can be used as a benchmark in demonstrating the market value in the area;
- 4) the Property has increased utility due to its having two cottages with separate septic systems on the site, which is a grandfathered use, and is the only multi-dwelling use in Wyanoke Harbor;
- 5) the Taxpayers compare a square-foot assessment without considering zoning regulations or any other factors pertaining to individual lots;
- 6) the majority of the lot is level with a rise located to the rear, the Property has year round access by a short, dirt right-of-way maintained by the association, the waterfront is level with a rocky shoreline and sandy bottom, and there is a small area of sandy beach;

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7) the Town did not consider the 1990, \$375,000 (Burack) sale because the owner was highly motivated to liquidate for financial reasons and, therefore, it was not considered an arm's length transaction;

8) the Thayer dwelling has no insulation and is not properly heated for year-round use, the waterfront is shallow, the access to the property is extremely steep, and due to the lot's slope and contour, the majority of the lot is unusable and the waterfront is very shallow;

9) a right-of-way cuts directly through the Muir property, which is located across the harbor and which property does not offer the amenities of the subject neighborhood, but it was valued in the same manner as the subject because the Property's additional frontage offset the Muir property's inferior amenities;

10) the Bentley property is located across the harbor and does contain 4.8 acres of land, however, it has an irregular shape and a large amount of wet area;

11) the common beach lot is valued as encumbered with the remaining value distributed to the non-waterfront lots and the neither the common beach nor the lack of a marina have an impact on the Property's value; and

12) the greatest factor in assessment is the waterfront portion, and Taxpayers have 100% full utility in the waterfront.

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. Note: The inspector's report is not an appraisal. The board reviews the report and

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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 placed no weight on the inspector's report.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property's assessment was disproportional for the following reasons:

- 1) The Town submitted assessment cards that indicated consistent assessment methodology and that the values were based on sales during the revaluation; consistent analysis and methodology is some evidence of proportionality; see Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).
- 2) Averaging square foot values, as done by the taxpayers, does not necessarily prove "disproportionality"; it only proves that the taxpayers' property is assessed more than the average property. Appraisals are not averages; rather they are the correlation of general sales data to the unique characteristics of a specific property.
- 3) Differing square-foot assessment values are not necessarily probative evidence of inequitable or disproportionate assessment. The market generally indicates higher per-square-foot prices for smaller lots than for larger lots, and since the yardstick for determining equitable taxation is market value (see RSA 75:1), it is necessary for assessments on a per-square-foot basis to

differ to reflect this market phenomenon.

4) The taxpayers argued that the land value has increased 600% in the last 10 years. Increases from past assessments are not evidence that a taxpayer's

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property is disproportionally assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985).

5) The 1978 purchase price was not probative evidence of the Property's fair market value because the market has changed so dramatically from 1978 to 1990.

6) The comparable sales submitted, when adequately adjusted for location, time, size, frontage, topography and improvements, support the assessment.

7) The Wyanoke Beach assessment has no bearing on the subject's assessment as the Town has valued it as encumbered with the remaining value assessed to the nonwaterfront lots; and

8) The Property has increased utility due to its having two cottages on the site.

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

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to John H. and Cynthia J. Jenkins, Taxpayers; and Chairman, Selectmen of Wolfeboro.

Dated: June 24, 1993

Melanie J. Ekstrom, Deputy Clerk

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