

C. James and Clayton E. Gooby

v.

Town of Wolfeboro

Docket No.: 10792-90

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$179,100 (land \$150,400; building \$28,700) on a 1-acre lot with a house (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 Property has no road frontage, no utilities, poor soil, a high water table, steepness, extremely wet conditions and a rocky shorefront;
- 2) the land cannot be sold as a buildable lot;
- 3) a culvert had to be installed because of water run off and drainage;

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- 4) a 30-foot service road easement splits the Property;
- 5) neighboring lots with more acreage and shorefront, but with similar topography, have lower assessments;
- 6) the land assessment should be \$114,000 to \$118,000; and
- 7) a December 5, 1981 appraiser's report estimated a \$24,482 market value on the land.

The Town argued the assessment was proper because:

- 1) the Property is assessed as a 1-acre waterfront lot;
- 2) the rear acreage is a private buffer for the house, and is buildable, i.e., garages, pools, tennis courts, wells, or septic systems could be constructed, increasing the Property's value;
- 3) the Property was inspected and no drainage problems were evident;
- 4) the Property has a concrete dock that was not considered in the assessed value;
- 5) comparable properties sold in May, 1990 for \$280,000, September, 1991 for \$232,500 and May, 1991 for \$245,000;
- 6) the Property's assessment is equitable to similar lots in the same neighborhood; and
- 7) the Taxpayers' comparables are not comparable because Williams has only .34 acres and Moran has 2.7 acres.

#### Board's Rulings

Based on the evidence, the board finds the Taxpayers submitted no sales of comparable properties. The Town submitted three neighborhood sales and three assessments of similar properties. The Taxpayers referred to the

Williams property to show disproportionality, yet made no adjustment for a

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significant size difference (.34 acres) compared to the subject's 1.1 acres. The Board agrees with the Town's position that the so-called rear lot does have a contributory value for other improvements such as a garage, storage sheds, recreation area, parking, expanded septic systems, etc.

A greater percentage increase in an assessment following a town-wide reassessment is not a ground for an abatement, since unequal percentage increases are inevitable following a reassessment. Reassessments are implemented to remedy past inequities and adjustments will vary, both in absolute numbers and in percentages, from property to property.

In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value.

The board finds the Taxpayers' Property was not overassessed. However, there was evidence indicating certain surrounding properties may have been underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other

similar properties. E.g., Id.

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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.

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

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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 C. James and Clayton E. Gooby, Taxpayers; and Chairman, Selectmen of Wolfeboro.

Dated: May 4, 1993

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Melanie J. Ekstrom, Deputy Clerk

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