

Stewart C. and Nancy Harlow

v.

Town of Weare

Docket No.: 10843-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's 1990 assessments of:

\$100,100 (land \$69,600; buildings \$30,500) on Lot 18, a .32-acre lot with a camp;

\$12,800 on Lot 16, a vacant, .55-acre lot; and

\$5,000 on Lot 41-5, a vacant, .5-acre lot with a 1/17th interest in a common beach right appurtenant to lot 16.

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 Taxpayers failed to appear, but consistent with our rule, TAX 102.03(g), the Taxpayers were not defaulted. This decision is based on the evidence

presented to the board. 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 abatements is denied.

The Taxpayers have the burden of showing the assessments were 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 on Lot 18 was excessive because:

- (1) the lot is located on a road not maintained by the Town, which affects any Town services the lot might receive;
- (2) the lot is accessible only nine months out of the year and is steep, permitting only partial use; and
- (3) on a per-acre basis, the lot was assessed higher than smaller lots.

The Taxpayers argued the assessment on Lot 16 was excessive because:

- (1) the lot is located on a road not maintained by the Town;
- (2) when the lot was purchased it was a buildable lot, but the Town will not issue a building permit to properties without frontage on Town roads; and
- (3) a realtor's 1990 opinion of value estimated a \$3,000-\$5,000 value, including the beach lot assessed at \$5,000.

The Taxpayers argued the assessment on Lot 41-5 was excessive because:

- (1) deed restrictions, multiple ownership, and lack of Town road frontage result in the lot being unbuildable;
- (2) a similar vacant lot was assessed at \$30,000 and, therefore, the assessment should be \$1,800 (\$30,000 divided by 17 ownership interests);
- (3) if each of the 17 interest owners paid \$5,000, the total assessment would be \$85,000;

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(4) a realtor's 1990 opinion of value estimated a \$3,000-\$5,000 value on Lot 16, including the beach lot; and

(5) on a per-acre basis, the assessment is excessive.

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 argued the assessments were proper because:

(1) 367 sales that occurred between April 1, 1988, and April 1, 1990, were used to set the values for the 1990 revaluation;

(2) the same methodology was used throughout the Town;

(3) the Town does issue building permits on non-Town-maintained roads and a 50% assessment depreciation was applied to Lot 16 to address this issue; and

(4) the beach-lot assessment was based on the sale of Lot 4 in 1989 for \$90,000 of which \$5,000 was allocated for the 1/17th interest in the beach lot.

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 assessments were proper. 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.

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Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the assessments were disproportional. Concerning Lot 18, the Taxpayers did not submit sufficient information concerning the \$64,000 sale that would enable the board to review the sale, nor did the Taxpayers submit any comparative analysis concerning the comparisons between Lot 18 and the sale. Furthermore, the Town submitted a significant amount of market data to show how the assessment was calculated, and the Taxpayers' use of one sale could not overcome this evidence.

Concerning the Taxpayers' per-acre analysis, 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.

Additionally, 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 Lot 16 and Lot 5, the board was unable to draw any

conclusions from the appraiser's letter because it was merely his opinion, and no documentation was provided to support that opinion. Concerning Lot 16 and the building permit issue, the Town presented sufficient evidence to show that

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building permits were being issued on non-Town-maintained roads, provided zoning board approval was obtained. Moreover, the assessment was reduced by approximately 50% to reflect this approval requirement.

Concerning Lot 5, the lot's value is not attributable to its building potential, but is attributable to its use as common access to the lake. Since the lot's use is as a common access, it is not appropriate to compare the assessment to lots that are intended to be developed. The board has seen the phenomenon where a lot can be worth more as a community-access lot than as a single building lot.

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

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Stewart C. and Nancy Harlow, Taxpayers; and

Chairman, Selectmen of Weare.

Dated: September 14, 1993

Valerie B. Lanigan, Clerk

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