

Nicholas S. and Maureen L. Kalfas

v.

Town of Alton

Docket No.: 8171-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessments of \$201,100 (land \$29,600; buildings \$171,500) on a .47-acre lot on Church St. with a house identified as map 28 lot 12 and \$239,500 (land \$214,000; buildings \$25,500) on a .14 acre lot with a house identified as map 54 lot 20. The Taxpayers also own, but did not appeal, another lot in the Town with an assessment of \$128,900. 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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry this burden and show disproportionality.

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Map 28 Lot 12

The Taxpayers argued the assessment was excessive because:

- (1) the lot is not level as stated by the Town;
- (2) the lot was overassessed in comparison to the Jordan property across the road which has greater frontage and has the possibility to be subdivided; and
- (3) the house is within two feet of the property line on one side which limits the utility of the property.

Map 54 Lot 20

The Taxpayers argued the assessment was excessive because:

- (1) the property was purchased from an estate in 1987 for \$185,000 based on an appraisal of \$192,000 and purchases from estates do not necessarily sell for less than those exposed to the open market;
- (2) the property did not appreciably increase in value from 1987 to 1990;
- (3) no adjustment was given to the lot due to its small size (.14 acre) and its limitation on expansion and further utility;
- (4) as of April 1990 there was litigation that cast a cloud on whether the septic system was legal or not; and
- (5) a septic system was constructed on an adjoining lot very close to the property line and has a negative impact on the property's value.

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The Town argued the assessment was proper because:

(1) an assessment analysis, prepared by William Corcoran, indicated the Property was proportionately assessed;

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(2) the house has been immaculately restored and maintained;

(3) the Jordan property is so irregularly configured that even if there was adequate acreage to subdivide it would be unfeasible to do so; and

(4) while the Jordan house may have similar original features, its state of improvements and maintenance are significantly different, and thus it is not a good comparable property.

Map 54 Lot 20

The Town argued the assessment was proper because:

(1) it is a common situation for small lots on the water to have only holding tanks and such a situation has not impacted market value based on sales of properties with holding tanks;

(2) the Town adjusted the site value by 20% for the encroaching septic system despite not being certain as to the effect of the encroachment;

(3) the camp was graded quite low and given 45% depreciation, which adjustments may have underassessed the property;

(4) an appraisal, prepared by William Corcoran, using the cost and market approaches supported the assessment;

(5) the lowest sales of properties on the lake indicate that there was a base price being paid just to be on the lake; and

(6) if trended, the appraisal of the property for probate purposes would

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indicate a market value of \$238,000.

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Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to carry their burden on either property. The major error was the total lack of 1990 market data. To carry their burden, the Taxpayers should have made a showing of the properties' fair market values. These values would then have been compared to the assessments 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.

Moreover, the Town adequately addressed all of the Taxpayers' arguments, and the Town submitted credible reports that supported the assessments. The following will be a response to the Taxpayers' specific arguments.

Map 28 Lot 12

The Taxpayers raised two issues concerning deficiencies in the Property -- that the lot is not level at the road and that the house is within two feet of the Property line. However, the board, based on the Town's report and based on the Taxpayers' lack of contrary evidence, concludes the so-called deficiencies do not adversely affect the property's value. Moreover, even if the board had concluded these factors affected value, the Taxpayers did not introduce any evidence to quantify how much these factors affected value.

Most of the Taxpayers' arguments focused on comparing this property with

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the Jordan property. We do not think the Taxpayers' proffered comparison was acceptable or supported by the evidence. Clearly, the Jordan property is inferior to the Property. Moreover, the Taxpayers attempted to compare these

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properties, using a broad approach, when a more detailed comparison with adjustments made for certain units of comparison and value factors such as building size and quality was required. This was not done, and thus the comparison could not be accepted.

Map 54 Lot 28

The board does not agree that the assessment should be the Taxpayers' 1987 purchase price or the 1987 appraised value. One reason for this conclusion was the Taxpayers lack of evidence to quantify what adjustment should be made due to market changes between 1987 and 1990. As stated by the Town, if the appraisal was time adjusted to 1990, it would have indicated a \$238,000 value. Moreover, the Town was correct when it asserted that an estate sale and an appraisal does not necessarily represent market value because the property was not exposed to the market. This does not mean that all estate sales are not for fair market value, but the Taxpayers did not introduce sufficient evidence to establish this sale was a fair market value sale. The other issues raised by the Taxpayers -- the existence of litigation, the issue of the septic system and the grandfathered status of the lot -- were all adequately answered by the Town's appraisal. The Town testified its appraisal was based on the worst possible lake properties in the Town. This appraisal still indicated the assessment was proper.

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Additionally, the Town testified some of the issues raised by the Taxpayers

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were analyzed using market data and were found not to affect value of these lower-end properties.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Nicholas S. and Maureen L. Kalfas, Taxpayers; and Chairman, Selectmen of Alton.

Dated: October 19, 1993

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Valerie B. Lanigan, Clerk