

Edilberto and Fe G. Ramos

v.

Town of Canaan

Docket No.: 8745-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$162,700 (land - \$132,800, buildings - \$29,900) on a single-family house on a .78-acre lot (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 granted.

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 carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) the Property is limited to seasonal use;
- 2) the Property was purchased in 1981 for \$40,000;

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3) an October 20, 1990 appraisal estimated a \$95,000 value;

4) two neighboring lots (MacLean and Lufkin) have larger lots and more lake frontage, but their land assessments were only \$108,100; and

5) the comparables submitted by the Town all have more acreage and lake frontage, yet the Property's assessment is only slightly less than the comparables' assessments.

The Town argued the assessment was proper because:

1) a \$2,700 reduction for additional depreciation on the building was given;

2) the Property has 100 feet of lake frontage;

3) the Property is in a private neighborhood, warranting a higher assessment;

4) the assessments are consistent throughout the Town;

5) the land and buildings are average grade; and

6) a neighboring .50-acre lot with a camp and 5 feet less lake frontage sold for \$150,000 in 1988.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$129,900 (land - \$100,000; buildings - \$29,900).

The board concludes the Taxpayers' November 1990 appraisal deserves little weight because: (1) in the cost approach, the appraiser undervalued the site value; (2) it was based on asking prices not sales prices; and (3) it was not time trended to April 1, 1990. Most importantly, the appraisal did not address the issue of proportionality of assessments.

The Taxpayers' best argument is that two nearby larger lots with more lake frontage were assessed at \$108,100. The Town did not specifically address this issue, which goes to assessment proportionality. The Town stated all lots were consistently assessed, but the evidence is otherwise. The evidence shows larger lots being assessed lower than the Property's smaller lot. We find the Property's land assessment should be \$100,000 to bring it in line with the other assessments.

Finally, the Town only submitted one sale to support the assessment. Since the Town was recently revalued, the Town should have submitted additional sales for the board's consideration. RSA 75:1 requires that assessments be in line with market value. Therefore, providing sales is essential for the board to compare the Property's assessment with fair market value and the general level of assessment in the municipality. See Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986). Moreover, the board is left to wonder whether all lakefront assessments were based on this one sale. We hope more sales were used, and we should have been given those sales so we could have reviewed the consistency of lake value.

We find the Taxpayers proved the Property's assessment was disproportional. If the taxes have been paid, the amount paid on the value in excess of \$129,900 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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
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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

Ignatius MacLellan, Esq., Member

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Edilberto and Fe G. Ramos, Taxpayers, and Chairman, Selectmen of Canaan.

Dated: December 2, 1992

Melanie J. Ekstrom, Deputy Clerk