

Charles H. Cromwell, III and Drewry W. Cromwell

v.

Town of Holderness

Docket No.: 9457-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$622,700 (land, \$589,600; buildings, \$33,100) consisting of 2.240-acres with a camp (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) an independent appraisal prepared by Lakeshore Appraisal Company estimated the land value as of April 1, 1990 to be \$485,000;

- (2) the property owners to the rear of the subject have a 25 foot right-of-way over the subject lot to the shore and a permanent dock on the shore, therefore, the effective shore frontage of the subject is 277 feet;
- (3) the right-of-way creates a very significant privacy intrusion to the Property; and
- (4) there is no disagreement that the building value and extra feature values were fair and equitable.

The Town argued the assessment was proper because:

- (1) it was based on substantiated sales and is consistent with neighborhood and similar properties;
- (2) the Taxpayers' appraisal is an opinion with respect to vacant and unimproved properties and since the Property is improved and developed the estimate has little to say about the total property or the assessment's equity;
- (3) the site is considered above average with good privacy and very good water views balanced against boat traffic; and
- (4) land assessments submitted of immediate neighbors support consistency.

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 proper assessment should be \$555,250 (land, \$522,150; buildings \$33,100). 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. In this case, the board placed no weight on the inspector's report.

#9457-90, Cromwell, III v. Town of Holderness

Page 3

Board Rulings

Based on the evidence, we find the correct assessment should be \$582,700 (land \$549,600, and building \$33,100). This assessment is ordered because the board finds the right-of-way over the Property to the shorefront does have an impact on the privacy of the lot, but not to the extent the Taxpayers feel. The condition factor has been adjusted to 1.25 for the existence of the right-of-way.

The board found no further adjustments were warranted. In reviewing the Taxpayers' appraisal report, the board noted significant discrepancies in the descriptions of the frontages and sizes of properties used as comparables. For example: comparable #2 listing sheet indicates 1.7 acres of land and 100 feet of water frontage and appraiser comments on the sale show 2.5 acres and 112 feet of water frontage; comparable #3 listing sheet indicates .66 acres of land, appraiser comments show 1.0 acre; comparable #5 listing sheet indicates 2.1 acres with 129 feet of water frontage and a sale price of \$192,000 in August, 1990, appraiser comments show this property consisted of 2.3 acres with 153 feet of water frontage and sold August, 1990 for \$293,750. Further, the appraiser noted on many of the comparables that the information was not verified. The substantial discrepancies and lack of verification of sales leaves the board to wonder whether the adjustments are proper and, thus, the board has placed no weight on the comparable sales data supplied by the appraiser.

The board must comment on the Town's brief. The Town failed to submit

any sales to support the assessment. Since the Town was revalued in 1990, the Town should have submitted sales for the board's consideration. RSA 75:1

#9457-90, Cromwell, III v. Town of Holderness

Page 4

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).

If the taxes have been paid, the amount paid on the value in excess of \$582,700 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 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

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Charles H., III & Drewry W. Cromwell, taxpayers; and the Chairman, Selectmen of Holderness.

Dated:

Melanie J. Ekstrom, Deputy Clerk

