

Nicholas Wallner\Louise A. Calhoun\Mimi Bloom

v.

Town of Holderness

Docket Nos.: 9547-90 and 11510-91PT

DECISION

The "Taxpayers" appeal pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessments on Map 3, Lot 37 of:

Nicholas Wallner & Louise A. Calhoun - 1/2 interest - \$101,000

Mimi Bloom - 1/2 interest - \$101,000

and on Map 3A, Lot 29 of:

Nicholas Wallner & Louise A. Calhoun - 1/2 interest - \$85,000

Mimi Bloom - 1/2 interest - \$85,000

Map 3, Lot 37 consists of 10.6 acres with a house and garage. Map 3A, Lot 29 consists of .70 of an acre on Squam Lake. The Taxpayers own, but did not appeal, Map 3, Lot 37-2. 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 203.09(a); 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 assessments were excessive because:

Map 3, Lot 37

- 1) the house is old and needs substantial repairs and modernization;
- 2) the Property is seasonal only;
- 3) compared with similar properties and neighborhoods, it is disproportionately assessed; and
- 4) an appraisal dated August, 1984 estimated the parcel at \$114,880.

Map 3A, Lot 29

- 1) the assessment is not in line with similar properties;
- 2) the .40 acre parcel is landlocked and only accessible by a right-of-way (restricted to a foot path) through an adjacent property and, if the lot was sold, the right-of-way may no longer be in effect;
- 3) the lot does not meet minimum zoning requirements to build, and has EPA and wetlands restrictions;
- 4) an appraisal dated August, 1984 appraised the lot at \$75,000; and
- 5) inconsistencies exist when comparing neighboring lots.

The Town argued the assessments were proper because:

Map 3, Lot 37

- 1) the Property was clearly built as a residence and is not of camp quality and it is the Taxpayers' choice not to modernize;

2) the Property is 50% larger than the largest comparable submitted by the

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Taxpayers with considerably lower assessed values per effective square foot most likely due to the lack of renovation; and

3) 40% of the structure's replacement cost new has been removed due to 30% normal depreciation and an additional 10% functional depreciation due to the layout.

Map 3A, Lot 29

1) the revised tax maps reveal the lot consists of .826 of an acre;

2) the 240 feet of waterfrontage is far superior to other lots due to view and privacy;

3) the lot is assumed buildable until proven otherwise and a site condition of 50% was assigned due to its topography and access;

4) Lot 28, Cottager's Cove is not comparable to the subject because it has been deeded into nine fractured pieces which seriously impacts further development; and

5) the McLoud property has only 10 more feet of water frontage, but does not have the same superior water view as the subject.

Board Findings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed for the following reasons:

(1) The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then

have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128

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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. The Taxpayers submitted an excerpt of an estate appraisal prepared in 1984. The board was unable to rely on this opinion of value because it was too dated to be of any value and it did not include any market data or adjustments in arriving at its value conclusion. Further, an appraisal prepared for estate purposes is likely to be below fair market value because in many cases, in order to minimize federal inheritance taxes, there is incentive to arrive at a lower value;

(2) The Taxpayers argued that the Property was assessed disproportionately when compared to larger properties. 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; and

(3) The Taxpayers submitted various documents indicating that the assessment had increased from past years. Increases from past assessments are not evidence that a taxpayer's property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985).

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 Page 5  
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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

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Paul B. Franklin, Member

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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 Nicholas A. Wallner, taxpayer; and the Chairman, Selectmen of Holderness.

Dated: February 11, 1994

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Melanie J. Ekstrom, Deputy Clerk

Nicholas Wallner\Louise A. Calhoun\Mimi Bloom

v.

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ORDER

This order relates to the Taxpayers' rehearing motion. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3. Further, in their request, the Taxpayers stated "as my appeal was denied, the Town's arguments as synopsisized in the decision must be assumed to have been accepted as fact and true, and that my arguments were discounted." The board's decision was based on all of the evidence presented, and its reasons for denial are outlined in its findings. The Taxpayers have the burden to prove the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair or disproportionate share of taxes and the Taxpayers failed to carry this burden.

Motion denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Nicholas A. Wallner, individually and as representative for Nicholas A. Wallner, Mimi Bloom and Louise A. Calhoun, Taxpayers; and the Chairman, Selectmen of Holderness.

Dated: March 15, 1994

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Melanie J. Ekstrom, Deputy Clerk

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