Susannah K. Scully

v.

Town of Holderness

Docket No.: 9793-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of $225,500 (land, $136,800; buildings, $88,700) on Map 3, Lot 32, a .37-acre lot with a single-family home and cottage (the Property). The Taxpayer owns, but did not appeal, several other parcels of land in the Town. The Taxpayer 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 Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:
(1) the land value is out of line for the size of the Property that is not on water and is in excess of similar property assessments in the area;

(2) the land is steep and access is difficult, and the view is blocked by neighboring pines;

(3) the land value increased 1500% after the revaluation;

(4) there is one deed for the house off Shepard Hill, its lot and 6/36ths interest in Cottager's Cove and they should be assessed together - another 2/36ths interest in Cottager's Cove was deeded separately and should be assessed separately;

(5) a December 31, 1990 appraisal estimated a $190,000 value for the property off Shepard Hill and 6/36ths interest in Cottager's Cove;

(6) parking is on the top of Shepard Hill;

(7) the access to the house from the parking area is approximately two stories down from the crest of the hill; and

(8) there is no control over the view.

The Town argued the assessment was proper because:

(1) the Shepard Hill site and the value of the 8/36ths interest in Cottagers' Cove were valued separately because they are separate parcels/interest;

(2) the site has sweeping, panoramic views of Squam Lake, the Ossipee Mountains, Red Hill and White Oak Pond and is easily accessed via Shepard Hill Road;

(3) a similar property sold in September, 1989 for $250,000 and the indicated site value is $140,000, and another lot with the same indicated site value of $140,000 sold in June, 1989 for $385,000; and

(4) other sites in the Property's immediate neighborhood were assessed similar site values because they enjoy a similarly magnificent view;

(5) the .37 acre site was created before minimum acreage requirements existed in Holderness.

Board Rulings

There are two issues that must be addressed by the board:

(I) what are the property interests subject to appeal?; and

(II) what is the proper valuation?

I) What are the property interests subject to appeal?

The Taxpayer has asked the board to find an assessed value for the property off Shepard Hill Road (Map 3, Lot 32) and for the 6/36ths interest (Map 3A, Lot 28) in Cottager's Cove because the property was purchased under one deed. Further, the Taxpayer argues that a 2/36ths interest in Cottager's Cove should be assessed separately because it was purchased separately. The Town asserts that the property off Shepard Hill Road and the 8/36ths interest in Cottager's Cove should be assessed separately because they are separate parcels with separate interests. The board finds that only the .37 acre property off Shepard Hill Road is properly before the board.

The board's jurisdiction is limited by the subject of the Taxpayer's original request to the Town and to the board. See Appeal of Sunapee, 126 N.H. 214, 216-17 (1985). It is indisputable that the Taxpayer never raised this issue of one assessment for the property off Shepard Hill Road and the 6/36ths interest in Cottager's Cove to the board. The April 22, 1991 application to the board of tax and land appeals referred only to Map 3, Lot 32, a .37 acre property off Shepard Hill Road. Having not previously

presented this argument to the board, the board, as an appellate tribunal, is without jurisdiction to consider this issue.

Even if the board had jurisdiction over the request, it would be denied. RSA 75:9 provides: "Whenever it shall appear to the selectmen or assessors that 2 or more tracts of land which do not adjoin or are situated so as to become separate estates have the same owner, they shall appraise and describe each tract separately and cause such appraisal and description to appear in their inventory." Under this provision, two or more tracts having the same owner must be appraised and described separately if they "do not adjoin" or if they "are situated so as to become separate estates."

II What is the proper valuation?

Based on the evidence, we find the correct assessment should be $191,300 (land, $102,600 and building, $88,700). This assessment is ordered for the following reasons:

(1) In reviewing the condition factors assigned to each of the comparable neighborhood assessments, the board finds that the Town has assigned a higher condition factor to the subject than is warranted. The evidence was:

	Site Value	**Condition**	**Comments**
Lot 32 (subject)	$136,800	4.00	
Lot 30A Hatch	$180,000	3.00	
Lot 33 Huntoon	$150,000	2.50	
Lot 34 Denison	$240,000	4.00	Far superior view
Lot 31 Ackley	$ 70,200	1.50	Substantially

inferior site and

view

Of the comparables, the only property with a condition factor of 4.00 was the Denison property which the Town said had a far superior view.

(2) The Taxpayer's appraisal report included the value of the Cottager's Cove interest which is not being considered by this board as explained above. Further, of the four appraisers comparables, only one was in the Town of Holderness, therefore the report was of little value to the board. However, the board found the Taxpayer's arguments along with a review of the assessment record cards supports overassessment.

(3) The board gave no weight to the argument that the taxes increased by 1500% after the revaluation. A greater percentage increase in an assessment following a town-wide reassessment is not a ground for an abatement, since unequal percentage increases are inevitable following a reassessment. Reassessments are implemented to remedy past inequities and adjustments will vary, both in absolute numbers and in percentages, from property to property.

Based on the evidence, the board finds that a condition factor of 3.00 is warranted for a total land value of $102,600. No evidence was offered to indicate that the value of the building should be reduced. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b).

If the taxes have been paid, the amount paid on the value in excess of $191,300 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

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Susannah K. Scully, Taxpayer; and Chairman, Selectmen of Holderness.

Dated: May 10, 1993

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Melanie J. Ekstrom, Deputy Clerk