

Sandra E. Sheltry

v.

Town of Nottingham

Docket No.: 9807-90 and 11720-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessments of \$290,300 (land \$113,700; building \$176,600) on Map 72, Lot 2-1, a 2.37-acre lot with a house on Pawtuckaway Lake (the Property). 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 assessments were 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).

The Taxpayer argued the assessments were excessive because:

1) the assessment-record had errors, e.g., the area over the garage is only 520 square feet and not 1,600, and the area should be classified as 3/4 finished and not 1/2 finished because the slanted roof limits the usage;

- 2) the land is steep and rocky;
- 3) the Property has no full lake views;
- 4) there is a 100-foot slope to the water which is confirmed by the topography map;
- 5) the only access to the Property is by dirt road;
- 6) there is a NH Electric Company easement;
- 7) comparable properties have their second acre assessed at \$1,500 while the Property's second acre is assessed at \$14,500;
- 8) the Taxpayer sold the Property in 1991 for \$220,000 completely furnished;
- 9) the Property should receive a 3% physical depreciation to address the age and a 5% functional depreciation to address the oversized garage; and
- 10) the assessment should be \$238,300.

The Town recommended revising the assessments to address the error in the square footage of living area above the garage, resulting in a \$9,800 reduction to \$280,500. The Town argued the adjusted assessments were proper because:

- 1) the Property is on the water with excellent views of Pawtuckaway Lake;
- 2) the house has 2,428 s.f. living area, custom built cabinets, floors, ceilings and trim, and has a well-designed layout;
- 3) access to the Property is on a private, well-maintained dirt road;
- 4) a December, 1991 sale on a less desirable lake with no view sold for \$200,000;
- 5) the Town's assessments have been equitable since the revaluation and the same methodology was used throughout the Town;

6) no depreciation was given to the building because of its exceptional quality, the garage received no depreciation because it could easily be converted into living space, and there was no adjustment for topography because the Property is on the water and the topography is similar to other lots; and

7) the second-acre, \$1,500 assessment on the Taxpayer's comparables was an error and the Town revised those assessments in subsequent years.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the assessments were disproportionate; however, the board finds the Town's 1990 and 1991 recommended assessments of \$280,500 to be reasonable and proper.

The Taxpayer failed to prove that the revised assessments were excessive because:

1) the Taxpayer's arguments focused primarily on factual errors and relative differences between the Taxpayer's assessment and neighboring properties;

2) the factual errors have been corrected by the Town in their revised assessment;

3) based on the Town's description of the dwelling and the parties photographic evidence, no physical depreciation is warranted; the Marshall & Swift cost manual estimate of depreciation is only that, an estimate which should be modified based on the specific property being appraised;

4) the garage, while large, appears to be suited and very functional for the site with two doors on the road side and one higher door towards the lake to receive a boat for winter storage;

5) the topography of the site was not shown to be so severe and restrictive so as to adversely affect market value; the total elevation drop between the road and lake appears to be approximately 70 feet from the topographical map submitted by the Taxpayer, not the almost 100 feet as estimated by the Taxpayer, in fact, the slope from the dwelling to the lake is well landscaped and affords a view of the lake; and

6) the only evidence of market value submitted by the Taxpayer was the sale of the Property with furnishings by the Taxpayer in 1991 for \$220,000; while the sale of the subject property can be cogent evidence, if the Town presents other market evidence that shows the sale does not conform to the general market, then the sale is not conclusive evidence of value, Appeal of Lakeshore Estates, 130 N.H. 504 (1988); the Town submitted such other market evidence in this case.

The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer 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 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.

If the taxes have been paid, the amount paid on the value in excess of \$280,500 for 1990 and \$280,500 for 1991 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.

#9807-90/#11720-91PT, Sheltry v. Nottingham

Page 5

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 that a copy of the foregoing decision has been mailed this date, postage prepaid, to Sandra E. Sheltry, Taxpayer; and Chairman, Selectmen of Nottingham.

Dated: June 3, 1993

Melanie J. Ekstrom, Deputy Clerk