

Robert W. and Dorothy W. Killoran

v.

Town of Enfield

Docket Nos.: 9855-90 and 11096-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessments of: 1990 -- \$120,400; and 1991 -- \$119,000 on a cottage on a 16,988 square-foot lot on Crystal Lake (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 submitted a long list of arguments of why the assessment was excessive, including:

- 1) the lot is nonconforming, grandfathered, and thus the Taxpayers cannot build a new house or expand the present house;

- 2) a 1986 appraisal estimated a \$69,500 value;
- 3) the structure is a small, 102-year old, seasonal cabin with many problems;
- 4) the Property's fair market value on April 1, 1990, would not exceed \$85,000;
- 5) the assessed value was based on frontage, not fair market value;
- 6) water access is limited to ten feet at the Property's south end; and
- 7) all drinking water is carried in because the existing well is contaminated.

The Town argued the assessment was proper because:

- 1) adjustments were made for lack of utilities, lake water and topography;
- 2) the Property is well within range of the average per-square foot price of comparable properties, if not substantially lower;
- 3) the Taxpayers' appraisal has little bearing since it is dated four years before the appeal year;
- 4) the same methodology was used throughout the Town; and
- 5) the Property has 225 feet of frontage on the lake.

The board's inspector inspected the Property, reviewed the assessment-record card, and filed a report with the board. This report concluded the proper assessment should be \$117,050 (land \$103,400; buildings \$13,650). The inspector gave an additional depreciation to the building.

#### Board's Rulings

Based on the evidence, we find the correct assessment should be \$117,050 (land \$103,400; buildings \$13,650). The best evidence was the board inspector's report.

The Taxpayers did not present any credible evidence of the Property's fair market value on April 1, 1990. This value would have been

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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. The Taxpayer's 1986 appraisal was not given any weight because the comparable sales used in it occurred 1984 - 1985, and the market went through considerable change between 1984 - 1990.

The Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v Town of Bedford, 122 N.H. 187, 189-90 (1982).

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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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert W. and Dorothy W. Killoran, Taxpayers; and Chairman, Selectman of Enfield.

Dated: January 29, 1993

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Melanie J. Ekstrom, Deputy Clerk

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