

Russell P. and Patricia L. Goss, Jr.

v.

Town of Holderness

Docket No.: 11304-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 adjusted assessment of \$831,900 (land \$620,000; buildings \$211,900) on a 5-acre lot with a single-family home and 12 lakeside cottages known as "Cotton Cove Cottages" (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 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 their burden.

The Taxpayers argued the assessment was excessive because:

(1) the Town assessed the Property with 387 feet of frontage on Squam Lake, yet the deed states the Property has only 332 feet of frontage;

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- (2) the Town erroneously included two homesites in the Property's land assessment, resulting in the land being overassessed by \$234,000;
- (3) there were errors on the assessment-record card, i.e., there are only three bedrooms and one bathroom in the main house and the construction grade should be A0 and not A3, and the 12 cottages do not have forced-hot-air heating systems;
- (4) two appraisals done in 1988 and 1990 estimated a \$590,000 value, using both the income and market approaches to value; and
- (5) a larger property with 20 cottages sold in 1986 for \$750,000, and the sale price included completely furnished cottages, 12 boats with power motors, lakefront equipment and beach furniture.

The Town failed to submit any arguments to support the assessment and was finally defaulted.

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 assessment was proper. 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.

Board's Rulings

Based on the evidence, the board denies this appeal, finding the

Taxpayers failed to show they were overassessed.

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Assessments must be based on market value, see RSA 75:1, and therefore, to show disproportionality, the Taxpayers should have introduced evidence of the Property's market value. The only asserted market evidence was the Van Winkle sale, and the estate "appraisals." The Van Winkle sale could not be relied upon for several reasons, including: 1) the sale occurred in 1986 and the assessment date here is April 1, 1991; 2) the Taxpayers did not provide any true comparison of the Property to the Van Winkle property; and 3) using the old assessments to arrive at a ratio (comparing the Van Winkle assessment with the Property's assessment) and then applying that ratio to the Van Winkle sales price is not appropriate appraisal methodology.

The estate appraisals could not be relied upon for several reasons, including: 1) they were done for estate purposes rather than being done to accurately and fully appraise the Property; and 2) there was inadequate documentation and analysis of how the value was calculated. These appraisals were more accurately opinions of values, and the board could not rely upon them.

Concerning the Taxpayers' other arguments:

1) the Taxpayers did not show that the Town erred in assessing this Property as having two basic sites -- one for the main dwelling and one for the cottages;

2) the frontage stated in the deed may have been less than that stated on the property record cards, but the Taxpayers did not show how this resulted

in an increased assessment; and

3) while the tax cards apparently had some errors, the Taxpayers did not show how these errors resulted in overassessment (For example, while the tax card on the main cottage indicated it had 4 bedrooms and not 3, the assessment was calculated on square footage not on number of rooms.).

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Based on the above, the board denies this appeal.

We find the Taxpayers failed to prove the Property's assessment was disproportional.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law.

Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Christopher J. Kelly, PTRC, Agent for Russell P. and Patricia L. Goss, Jr., Taxpayers; and Chairman, Selectmen of Holderness.

Dated: December 13, 1994

Lynn M. Wheeler, Deputy Clerk

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