

Jonathan P. Siek and Deborah Jacobson

v.

Town of Holderness

Docket No.: 11415-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$434,100 (land, \$400,000; building, \$34,100) located on Squam Lake consisting of .6 acres with a camp (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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

1) the Property is inferior in size and quality to nearby properties which have similar or lower assessments;

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- 2) an appraisal prepared by Lakeshore Appraisal Company indicated a fair market estimate of \$305,000 as of April 1, 1991; and
- 3) an assessment study demonstrated the building value is correct, but the land is inferior to neighboring properties in relation to size, quality of lot and shore frontage.

The Town failed to submit a brief and was placed in final default.

Board Findings

The board finds the correct assessment should be \$386,100 (land, \$352,000; buildings, \$34,100). The board has reviewed the appraisal report submitted by the Taxpayers and finds, based on the comparable assessment data and comparable sales data submitted, that a site condition factor of 1.10 is appropriate. The board was not convinced by the appraiser's estimate of fair market value based on a comparable sales analysis of shore frontage because the appraiser utilized an effective frontage for the subject Property and actual frontage for the comparable sales. In order for the unit value or front-foot value to be a relevant method, the frontage for both must be the same, effective or actual. However, the board reviewed the comparable sales data supplied and the assessment-record cards of neighboring properties and finds the proper assessment to be \$386,100.

The board is dismayed at the Town's failure to supply information necessary to support their assessment or otherwise refute the Taxpayers' claim.

If the taxes have been paid, the amount paid on the value in excess

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of \$386,100 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing 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 rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing 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 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 rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

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Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Jonathan P. Siek and Deborah Jacobson, Taxpayers; and Chairman, Selectmen of Holderness.

Dated: May 3, 1994

Melanie J. Ekstrom, Deputy Clerk

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