

Lindsay G. and Phyllis A. Gregory

v.

Town of Pittsburg

Docket No.: 12385-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$273,100 (land \$254,000; buildings \$19,100) on a 6.5-acre lot 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. However, after a review of the written submittals, the board determined that a hearing would be necessary in order to make an appropriate 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 their burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Property value increased as a result of the revaluation;
- (2) the Property is located across the road from the lake and New England Power Company owns all lake-shore property around the Second Connecticut Lake;

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(3) the camp is a one story former garage and workshop converted into four rooms, has no foundation, no running water or electricity and the road is not maintained in the winter;

(4) Appraiser John Forbes estimated the value as of April 1, 1991 to be \$65,000; and

(5) a fair assessment would be \$68,250.

The Town argued the assessment was reduced to \$138,900 and was proper because:

(1) all land below the high water mark around the First and Second Connecticut Lakes is owned by New England Power Company;

(2) for purposes of property valuation, all land above the high water mark is considered waterfront property as the owners enjoy all of the benefits associated with waterfront properties subject to the uniqueness of their property;

(3) the Property is unique and has approximately a 60-degree view of the Second Lake;

(4) based on the testimony and photographs, a 25% temporary depreciation to the building is recommended; and

(5) comparable sales and comparable properties support the reduced assessment.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$89,100 (land \$74,800; building \$14,300). This assessment is ordered for the following reasons:

(1) The various deeds submitted clearly indicate that the Taxpayers do not have waterfront or water access property. Therefore, the Property should not be assessed as waterfront property.

(2) Although the Taxpayers' testimony was that the trees on the property owned by New England Power Company were obstructing the view, the board finds, based on the photograph submitted by the Town, that there is an enhancement to the Property for the view and an adjustment to the condition factor is warranted.

(3) The photograph and testimony supports an additional 25% temporary depreciation to the building.

In arriving at its decision, the board made the following adjustments (detailed above) to the land assessment:

TYPE	UNIT PRICE	CD	FACT	COND	LAND VALUE
.50AC	30,000	E	1.00	1.25	\$37,500
6.0AC	3,000	X	.97	.85	\$14,800
500FF	75.00	E	1.00	.60	<u>\$22,500</u>
					\$74,800

If the taxes have been paid, the amount paid on the value in excess of \$89,100 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.

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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

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Margaret H. Nelson, Esq., Attorney for Lindsay G. and Phyllis A. Gregory, Taxpayers; and Chairman, Selectmen of Pittsburg.

Dated: August 19, 1994

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Valerie B. Lanigan, Clerk