

Philip J. and Margaret T. Soave

v.

Town of Brookfield

Docket No.: 12476-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$162,250 (land \$124,950; buildings \$37,300) on a 1.3-acre lot with a camp on Kingswood 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 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 and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the camp is incomplete, i.e., there is no insulation, no flooring, and no ceilings, the camp is only partially sheetrocked for privacy, and the

foundation is cracked;

(2) the camp is seasonal only, and drinking water must be purchased in the Town;

(3) the Property receives no Town services, resulting in increased fire insurance premiums;

(4) the Property can only be accessed by 4-wheel drive, and is not passable at all in winter months; and

(5) the taxes increased significantly, yet there were no improvements made to the Property.

The Town argued the assessment was proper because:

(1) the Property is in a desirable, private location;

(2) the assessment was based on sales that occurred on comparable water bodies during the revaluation;

(3) waterfront properties have appreciated faster than other property types since the last reassessment, and the large assessment increase corrected past inequities in waterfront lots;

(4) the Property was assessed equitably with other developed lots on Kingswood Lake;

(5) the assessment reflects the camp's physical condition; and

(6) the Taxpayers did not provide any market data as of April 1, 1991.

Board's Rulings

The board finds the Taxpayers failed to prove their Property is disproportionately assessed. The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers 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

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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 Taxpayers complained about the high amount of taxes they must pay. The amount of property taxes paid by the Taxpayers was determined by two factors: 1) the Property's assessment; and 2) the municipality's budget. See gen., International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor i.e., the board will decide if the Property was overassessed, resulting in the Taxpayers paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. at 217. The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

The Taxpayers argued that their Property did not avail itself of various Town services. Lack of municipal services is not necessarily evidence of disproportionality. As the basis of assessing property is market value, as defined in RSA 75:1, any effect on value due to lack of municipal services is reflected in the selling price of comparables and consequently in the resulting assessment. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

The board finds the Town's methodology of reviewing what few sales did exist on Kingswood Lake and considering sales of properties on comparable

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lakes in the area to be reasonable. The board finds the Town employed a consistent methodology in their assessment practices. This testimony used 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

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Philip J. and Margaret T. Soave, Taxpayers; and Chairman, Selectmen of Brookfield.

Dated: November 22, 1993

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Lynn M. Wheeler, Deputy Clerk