

Robert C. and Shirley H. MacFarlane

v.

Town of Wakefield

Docket No.: 12739-92-PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$282,800 (land, \$245,100; building, \$37,700) on .730 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 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 this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because the Town has failed to follow the board's previous decision (Docket No.: 7757-89), which stated the Property shall be assessed as one lot resulting in a \$211,800 assessment. The Town abated the taxes for 1989, 1990 and 1991 but refused to

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lower the assessment to \$211,800 because the Town thinks the board erred and its ordered assessment was too low.

Further, the Taxpayers argued:

- 1) the road is not maintained by the Town, resulting in the Property not being accessible during the winter months;
- 2) an October 5, 1989 appraisal estimated a \$256,000 value;
- 3) a May 7, 1992 market analysis estimated a \$200,000 value; and
- 4) a May 28, 1992 letter stated after a 30% decline in values since 1988 prices have now stabilized.

The Town argued the assessment was proper because:

- 1) two property-record cards (Borgo and Saunders) were used as comparable properties; and
- 2) a reduction of \$80,800 was given after lots 87 and 88 were combined.

#### Board Findings

Based on the evidence, the board finds the Taxpayers did not show overassessment.

First, it is essential to state that the board's 1989 decision was in error. That decision reflected an assessment that only included a land assessment. Why the Town did not move for a rehearing and inform the board of its error is unknown. Nonetheless, the Town, pursuant to RSA 75:8, is required to annually review assessments and make adjustments as necessary. Certainly, adjusting an assessment due to a clear board error is appropriate.

We now turn to the valuation issue. We begin by noting that while the assessment was \$282,800, the Property's equalized value was only \$222,680.

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This figure is arrived at by dividing the assessment by the department of revenue's equalization ratio. The equalized value provides a rough estimate based on an assessment-to-sales study about what a property's market value might be.

Turning to the Taxpayers' value evidence, the Taxpayers submitted an October 1989 appraisal, which the board could not rely upon because it was too remote in time to the 1992 assessment date. That appraisal used one 1989 and two 1988 sales. Further, the Taxpayers submitted a May 1992 realtor's letter. We first note that that opinion was provided without an interior inspection. Moreover, the board was unable to rely upon the value opinion because the realtor did not include the basis for the value conclusion. Specifically, the value opinion did not indicate what sales were used or what adjustments were made to the sales to arrive at the value conclusion. Without such information, the board and the Town are unable to review the soundness of the value conclusions.

Based on this analysis, the board denies this appeal.

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

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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

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been  
mailed this date, postage prepaid, to Robert C. and Shirley H. MacFarlane,  
Taxpayers; and the Chairman, Selectmen of Wakefield.

Dated: December 23, 1994

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Melanie J. Ekstrom, Deputy Clerk