

William F. and Rita A. Larue

v.

Town of Wakefield

Docket No.: 12777-92-PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$173,400 (land, \$98,000; buildings, \$75,400) on a 1.04-acre lot with a house (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:

- (1) the land is 20 feet above the high-water mark and special stairs had to be constructed to access the water;
- (2) the Property is split in half by a right-of-way used by 12 other families

to access their lots;

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(3) the Property has no beach area and the water drops 8 feet at the end of the dock;

(4) the Property has the highest land assessment in the subdivision, yet all the lots have relatively the same acreage;

(5) other lots with easy water access and level, sandy beaches had lower land assessments;

(6) the assessment failed to recognize the Property's right-of-way and water access; and

(7) a comparable lot had their assessment reduced to \$137,000 by board order for tax year 1989.

The Town argued the assessment was proper because the differences in land assessments can be attributed to a property's proximity to the cove, i.e., properties closer in the cove had reduced land factors.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove overassessment.

While the Taxpayers raised a number of issues that they thought adversely affected value, the Taxpayers did not submit any information to support such a conclusion. Specifically, the Taxpayers did not present any credible evidence of the Property's fair market value. To carry their 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 attempted to rely upon the board's 1989 decision in Lee v. Wakefield. The Taxpayers submitted photographs of the Lee property and the Property and argued the Property's assessment should be reduced given the Lee decision. The board disagrees. Judgement is the touchstone when it comes to valuing properties. The board finds the \$136,550 equalized value was not excessive. This equalized value was calculated by dividing the assessment by the department of revenue administration's (DRA's) equalization ratio. The equalized value gives a rough approximation of the Property's market value based on the DRA's assessment-to-sales study.

Concerning the Lee decision, the board hears numerous appeals a year, and the evidence varies greatly from case to case. The board may have, quite frankly, erred in underassessing the Lee property. Thus, the board will not rely upon the Lee case in deciding this case.

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

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)

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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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to William F. and Rita A. Larue, Taxpayers; and the Chairman, Selectmen of Wakefield.

Dated: December 23, 1994

Lynn M. Wheeler, Deputy Clerk

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