

Mary A. and James E. Jones

v.

Town of Wakefield

Docket No.: 12789-92-PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$52,100 (land only) on 5.0 acres (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) it was higher than assessments on other identical lots;
- 2) the 1989 revaluation provided decreases in assessed values except for lots 8 and 9;
- 3) nearly all the lots have better topography;

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4) the Property has been up for sale for several years without a potential buyer; and

5) an appropriate assessment would be \$39,900.

The Town argued the assessment was proper because:

- 1) property-record cards for Taxpayers' comparables indicated lots were assessed due to proximity to their deeded common waterfront access; and
- 2) topography of the lots were also a consideration in the valuation of the properties.

Board Findings

Based on the evidence, the board finds the proper assessment should be \$45,500. This adjusted assessment was calculated by reducing the condition factor to 1.30 to reflect the Property's undeveloped factor.

In reviewing the appeals from the Town, and the assessments therein, the board noted that the Town did not provide any adjustment for lots that were undeveloped. Certainly, a prospective purchaser would pay less for a lot that was undeveloped and needed site work for construction. Yet, the Town's assessment methodology does not appear to reflect this reality. Therefore, the board has made a conservative adjustment in the condition factor to reflect the Property's undeveloped factor.

None of the other arguments raised by the Taxpayers warrant any further reduction. Specifically, 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

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level of assessments generally in the Town. See, e.g., Appeal of NET Realty 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.

If the taxes have been paid, the amount paid on the value in excess of \$45,500 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 1993 and 1994. 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 "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 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,

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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 that a copy of the foregoing decision has been mailed this date, postage prepaid, to Mary A. and James E. Jones, Taxpayers; and the Chairman, Selectmen of Wakefield.

Dated: December 23, 1994

Melanie J. Ekstrom, Deputy Clerk

James F. & Mary A. Jones

v.

Chairman, Board of Selectmen

Docket No. 12789-92-PT

ORDER

This order responds to the "Taxpayer's" rehearing motion which is denied. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See 541:3.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to James F. & Mary A. Jones, Taxpayers; and the Chairman, Selectmen of Wakefield.

Valerie B. Lanigan, Clerk

Date:

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James F. and Mary A. Jones

v.

Town of Wakefield

Docket No.: 12789-92PT

ORDER

This order responds to the Town's "request for clarification." The Town is not obligated to apply the board's ordered assessment for 1994 because the Town underwent a general revaluation.

SO ORDERED.

BOARD OF TAX AND

LAND APPEALS

MacLellan, Esq., Member

Ignatius

Member

Michele E. LeBrun,

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to James F. and Mary A. Jones, Taxpayers; and Chairman, Wakefield Board of Selectmen.

Ekstrom, Deputy Clerk

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Melanie J.