

Ronald and Linda Lavenda

v.

Town of Ashland

Docket No.: 13821-93-PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$108,600 (land, \$82,000; buildings, \$26,600) on a .38-acre lot with a cottage (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) an April 1993 appraisal estimated a \$92,000 value;
- (2) the land value increased 400% in 1993;
- (3) properties are selling below their assessed values and waterfront values

have declined as much as \$10,000 per local realtors; and

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(4) a bank denied the Taxpayers' financial application because the Property's value had declined.

The Town argued the assessment was proper because:

(1) the Town was revalued in 1993 and sales from January 1, 1991 to December 31, 1992 were used to set the values;

(2) waterfront properties appreciated at a faster rate than non-waterfront properties due to market demand and value shift over the years.

(3) the Property is located on Squam River with access to Little Squam Lake and Big Squam Lake;

(4) two comparable sales relied upon for the river value are located across from the Property;

(5) the Taxpayers' appraisal was done for financing and such appraisals are typically lower than market value; and

(6) the Taxpayers' appraisal was flawed because the comparables were not comparable in size, location or water access, one comparable was in another town, and the appraiser's adjustments were not supported by market data.

#### Board's Rulings

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

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed for the following reasons:

1) the board concurs with the Town's representations that the Taxpayers appraisal did not make adequate adjustments to the comparable sales to account

for (a) waterfrontage, water access or water view, (b) location, (c) size of

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the lots, and (d) age of the properties (comparable number 2 - 3 years old versus subject's 25 years old). The board finds the adjustments made to comparable sales 2 and 3 for location (#2 on Owl Brook, #3 not on any water body) to be on the low side and finds comparable #1 to have the most weight in comparison to the subject. Further, the adjustments determined by the appraiser were either without any documentation or lacked adequate support either through market data or a cost analysis. The appraiser's indicated value of the subject based on comparable sale #1 was \$106,500 which adds support to the Town's assessment.

2) The Property is located on Squam River with access to Little Squam Lake and Big Squam Lake. The Town supported its value through the use of comparable sales on the River.

3) The Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

The Taxpayers argued that their land assessment had increased significantly as a result of the Town's reassessment. A greater percentage increase in an assessment following a town-wide reassessment is not a ground for an abatement, since unequal percentage increases are inevitable following a reassessment. Reassessments are implemented to remedy past inequities and adjustments will vary, both in absolute numbers and in percentages, from property to property.

Increases from past assessments are not evidence that a taxpayer's property is disproportionally assessed compared to that of other properties in

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general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985).

A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within thirty (30) 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, 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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George Twigg, III, Chairman

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Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Ronald and Linda Lavenda, Taxpayers; and the Chairman, Selectmen of Ashland.

Dated: May 3, 1995

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Lynn M. Wheeler, Deputy Clerk

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