

Warren K. & Joyce O. Hale

v.

Town of Durham

Docket No.: 14362-93-PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$71,000 (land \$47,900; buildings \$23,100) on a .16-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 this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) the installation of a septic system and well is prohibited and use of the camp during warm months requires carrying in water and a chemical toilet;
- 2) the Property lacks insulation, adequate heating and plumbing, and is uninhabitable on a year-round basis;

- 3) larger land comparables with better water access were assessed lower;
- 4) comparable winterized structures with indoor plumbing were assessed in the same range; and
- 5) the proper assessment should be \$18,900.

The Town argued the assessment was proper because:

- 1) the Property was given a 65% adjustment in the land condition factor to address the well and septic restrictions and a right-of-way;
- 2) lack of facilities resulted in a 10% functional obsolescence on the cottage;
- 3) the Property can be used seasonally, which is the typical market for camps;
- 4) the Property was assessed lower than the Taxpayers' own comparable number two;
- 5) the Taxpayers' comparable number one is unbuildable and, therefore, not comparable to the Property, which is an improved lot; and
- 6) two comparable sales support the assessment.

BOARD FINDINGS

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

The Taxpayers' main contention was that because their lot could not be permitted for a septic and a well, the Property should be valued the same as the adjacent, unimproved lot, which was unbuildable. The board finds this a specious argument. The lot is not unbuildable because it has an existing cottage, albeit with limitations as to its use. The rights the Taxpayers have by the existence of the seasonal cottage exceed those rights that Lot 27 has,

which apparently is restricted to no building for seasonal or year-round habitation.

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The board finds the Town's adjustments for the Taxpayers' Property are reasonable and recognize the limitations of its use due to the lack of septic and water supply. Further, the comparable sales submitted by the Town, while certainly of superior property, indicate that the Town's adjustments are reasonable. The two comparables sold for approximately \$30,000 to \$50,000 more than the Taxpayers' Property was assessed. Lastly, based on the board's experience, the board finds an assessed value of \$71,000 on a property with access to waterfront such as Little Bay and improved with an average-quality cottage, albeit with limitations as to its use, is a very reasonable assessment.

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. This, 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. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Warren K. & Joyce O. Hale, Taxpayers; and the Chairman, Board of Selectmen, Town of Durham.

Dated: August 11, 1995

Melanie J. Ekstrom, Deputy Clerk