

Anthony & Marie Ingemi

v.

Town of Ashland

Docket No.: 14682-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$154,800 (land, \$128,300; building, \$26,500) on .159 acres 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 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 exceeded market value based on comparable sales;
- 2) access is seasonal because the road is not town maintained; and
- 3) a fair market value as of April 1, 1993, should have been \$101,000 based on a sales comparison of similar properties in close proximity to the Property.

The Town argued the assessment was proper because:

- 1) there was a town-wide revaluation in 1993 and all sales that occurred within the Town were analyzed to establish values;
- 2) the adjustments made by the department of revenue administration were uniformly applied and derived from the market;
- 3) the Taxpayers' representative is not an appraiser and therefore, her report was only an opinion of value; and
- 4) the Taxpayers' comparables 1 and 3 were questionable as to being an arm's-length transaction.

BOARD FINDINGS

The board finds the proper assessment should be \$141,975 (land \$115,475; building \$26,500).

This assessment was calculated by applying a 10% adjustment to the land assessment, resulting in a recalculated land assessment as follows: basic value \$97,200 x .9 (board adjustment) x 1.32 excess adjustment = \$115,475. The board made this adjustment based on its judgement that the assessment was excessive given the two sales that were provided by the Taxpayers, namely comparables #1 and #2. The board's -10% adjustment to the land could be attributable to market factors or to the Property's small size and triangular shape.

The board did not accept the Taxpayers' agent's analysis, which indicated a \$101,000 valuation, because: a) the agent apparently did not consider the amount of lake frontage; b) the agent did not justify the substantial adjustment for seasonal access; and c) the agent is apparently just beginning and relied upon many other sources in deciding what values should be rather than the agent making an independent analysis. Despite these concerns, a

review of comparables Page 3
Ingemi v. Town of Ashland
Docket No.: 14682-93PT

#1 and #2, which were the only Little Squam sales that arguably were fair-market sales, indicate the \$154,800 assessment on the Property is excessive.

We do not find that the Town submitted sufficient information to show that comparable #1 was not a fair-market sale. Just because a seller is motivated, as indicated by the Town, does not mean a sale was not a fair-market sale. Furthermore, the price for comparable #1 was in line with comparable #2, which apparently was a qualified fair-market sale. We also declined to use the Samaha-to-Swanson \$205,000 sale because that property was a larger lot (1.1 acre) with a larger house (1,152 square feet).

While we understand the Town's argument concerning consistent methodology, we note again the methodology may breakdown when it comes to assessing small lots, especially small lots with unusual shapes.

If the taxes have been paid, the amount paid on the value in excess of \$141,975 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 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 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, Page 4
Ingemi v. Town of Ashland
Docket No.: 14682-93PT

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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Kathy Schaefer, Taxpayers' representative; and Chairman, Board of Selectmen.

Dated: September 15, 1995

Clerk

0006

Melanie J. Ekstrom, Deputy