

Herbert W. & Dorothy W. & Donald E. Hall

v.

Town of Ashland

Docket No.: 14692-93-PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$147,500 on a .19-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.

The Taxpayers argued the assessment was excessive because:

- 1) the land is steep, rocky, with fair drainage and soils, and cannot support a leach field;
- 2) the building lacks a modern kitchen, has open stud walls, no insulation, and limited closet space;

- 3) the Town's equalized assessment ratio of 100% should not apply to waterfront sales, and the excess frontage factor was unreasonably high;
- 4) comparable lots with more frontage on the lake were assessed lower per square foot;
- 5) the market value should be \$105,000 based upon a flat, slow market for lakefront properties; and
- 6) a June 1994 appraisal estimated a \$105,000 market value.

The Town argued the assessment was proper because:

- 1) the Property has an adequate means of sewage disposal;
- 2) the building was graded a class two structure and an adjustment was given for its seasonal construction;
- 3) the excess frontage factor was used consistently with property on Squam Lake and other lakes around the state;
- 4) no market data was presented to show the frontage adjustment was applied inconsistently;
- 5) the Taxpayers presented no evidence as to what the correct assessment ratio was;
- 6) the Taxpayers did not provide supporting market data to show how the market distinguished between the size of lots and frontages; and
- 7) the Taxpayers' appraisal relied too heavily on the appraiser's judgment with excessive adjustments to comparables.

BOARD FINDINGS

Based on the evidence, the board finds the Taxpayers did not show overassessment, and the appeal is denied.

By way of introduction, the board notes that it spent a considerable time reviewing the parties' evidence and arguments. The board carefully reviewed the Taxpayers' appraisal and other evidence, and we carefully reviewed the Town's evidence and analysis. Frankly, given the \$147,500 assessment involved, the board spent significantly more time on this appeal than on similarly valued appeals. Ultimately, we deny the appeal for three reasons:

- 1) the Town presented adequate evidence concerning the assessment and its proportionality;
- 2) the Taxpayers have the burden of proof to convince the board of overassessment; and
- 3) the Taxpayers' evidence on market value was not accepted by the board.

As will be discussed below, despite this denial, the board had some concerns about this assessment, but the bottom line is that we did not think that an assessment of \$147,500 was excessive for this camp on Little Squam Lake.

The Taxpayers had the burden to prove the Property's fair market value. If that burden had been carried, the board would have then reviewed that value and compared it to the Property's assessment and the general level of assessment in the Town. Unfortunately, we could not accept the \$105,000 value conclusion for the following reasons.

- 1) Comparable #1, the abutting property, apparently was not a market sale. The Town raised questions about whether the sale was representative of market value. Additionally, the revenue department in its equalization study noted: "Distressed sale - [grantor] lost [several properties] in other [Towns]." Thus, comparable #1, which would have been an excellent comparable due to its location

next to the Property, could not be relied upon because of the uncertainty about whether it was representative of the market.

2) The gross adjustments to comparable #3 were substantial \$77,100 or 38% of the sale price, calling into question whether it was even a comparable property.

3) The adjustments made to comparables #2 and 3 were unsupported and were arbitrarily made. For example, the appraiser made a negative \$8,000 adjustment because the comparables had two-car garages while the Property had none. A review of the assessment cards on the comparables indicated that comparable #2 had a 480 square-foot garage, which was depreciated by 40%, and comparable #3 had a 576 square-foot garage, which was depreciated by 15%. Additionally, the photographs of these two garages showed that they were different designs and different grades. Despite these differences, the appraiser used the same \$8,000 adjustment for comparable #2 and comparable #3. To confirm the board's concerns, we reviewed the Marshall & Swift, Residential Cost Handbook A-43 (1993). Using the per-square-foot cost of detached garages with siding or shingle and using the depreciations shown on the assessment cards, demonstrated the difference on a cost basis of the two garages. (Comparable #2 480 square feet x 16.49/sf = \$7,915 x .6 (for depreciation) = \$4,750. Comparable #3 576 square feet x 14.83/sf = \$8,542 x .85 (for depreciation) = \$7,260.) A similar review and analysis was done for the \$5,000 insulation adjustment that was done by the appraiser. The Residential Cost Handbook, B-8 to 13, indicated that the \$5,000 adjustment was excessive.

4) There was no evidence supplied to support the \$5,000 downward

adjustment that was made to comparables 2 and 3 for the public versus private road.

Page 5

Hall v. Town of Ashland

Docket No.: 14692-93PT

Based on these concerns, the board does not accept the \$105,000 value estimate. Thus, we are left without any evidence of the Property's fair market value from the Taxpayers, and we then must review the Taxpayers' other arguments and the Town's responses thereto.

Unfortunately, while the Taxpayers did raise some issues, they were unable to show that the overall assessment was excessive. Specifically, the board has concerns about the Property's leach field being on another property, but there was insufficient evidence to show how this affected value or how this resulted, overall, in overassessment. The Town responded to most of the Taxpayers' other concerns, and we agree with the Town that many of the concerns were considered and addressed.

We do, however, have a concern, about the Town's 1.90 size adjustment that was used on this Property. The sales used by the Town to set the front-foot values all had significantly more lake frontage than the Property (130 to 308 front feet for the sales, the Property only 45 front feet). We do agree with the Town that the value per-front-foot will be higher for lots with less frontage, but we question whether this Property warranted a 1.90 size adjustment. Additionally, the Town did not provide any evidence supporting the 1.90 size adjustment. We note the Blaisdell property, which sold in December 1992 for \$145,000, had 75 feet of figured frontage, and thus supported the 1.40 factor used for the 75 front-foot lots. Our concern about the 1.90 size adjustment is amplified because of the small size of the Property (.17 acres).

Common sense would tell us that a property with limited water frontage that

also is a small lot would not warrant the 1.90 size adjustment because of the limited utility of

Page 6
Hall v. Town of Ashland
Docket No.: 14692-93PT

the lot. In this case, the lot was so small that the septic system had to be located on another property.

Nonetheless, despite our strong reservations about the 1.90 size adjustment, we again come back to the fact that the assessment does not seem excessive for this type of property and that the Taxpayers did not introduce sufficient evidence that the assessment, overall, was so flawed that the total was excessive. Thus, we deny the appeal.

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.

Page 7
Hall v. Town of Ashland
Docket No.: 14692-93PT

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 Herbert W. & Dorothy W. & Donald E. Hall, the Taxpayers; and the Chairman, Board of Selectmen.

Dated: September 15, 1995

Melanie J. Ekstrom, Deputy

Clerk

0006

Herbert W. & Dorothy W. & Donald E. Hall

v.

Town of Ashland

Docket No.: 14692-93-PT

ORDER

This order relates to the "Taxpayer's" rehearing motion. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3. After reviewing the rehearing motion, the file and the decision, the board concludes the decision accurately reflects the board's position concerning this appeal.

Motion denied.

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 Herbert W. & Dorothy W. & Donald E. Hall, the Taxpayers; and the Chairman, Board of Selectmen.

Date: October 27, 1995

Valerie B. Lanigan, Clerk

0006