

Francis and Ellen Laase

v.

Town of Tuftonboro

Docket No.: 15083-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$219,950 (land \$127,700; buildings \$92,250) on a .5-acre lot with a house (the Property). The Taxpayers also own, but did not appeal, another lot in the Town with a \$14,950, current-use assessment. 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 its burden.

Parties Arguments

The Taxpayers' primary concern was that the assessment record card should contain specific notations that the Property has water access and dock use for it to be assessed at the current level.

The Taxpayers argued the assessment would be excessive if the water rights were not certain because:

- (1) the Property abuts a Town owned parcel which is used as a town beach;
- (2) the Property does not front on the lake or have water rights, but rather fronts on the old Rte 109 which was reclassified as a class V town road;
- (3) other properties with views of the lake but with no access are assessed at a lower base rate than the Property;
- (4) the land on which the Taxpayers' dock is located is owned by Poirier, and the Taxpayers' dock has been on that parcel for 55 years and recently by agreement with Poirier;
- (5) the Town has filed an action in Superior Court against the Taxpayers; and
- (6) the Town communicated with both the N.H. Dept. of Transportation and the N.H. Wetlands Board prior to April 1994 relative to the Taxpayers' dock being in the state right-of-way.

The Town argued the assessment was proper because:

- (1) the dock has not been assessed to the Taxpayers;
- (2) the site adjustment was reduced by 25% for Rte 109 being between the site and the waterfrontage;
- (3) the site was valued based on the assumption the Taxpayers had prescriptive rights to use the waterfront;
- (4) the base land values were based on sales along the lake and are supported by subsequent sales; and

(5) the cost of legal and surveying costs should not be subtracted from the land assessment for the uncertainties of the ownership of the land along the frontage because the Taxpayers' assessment is already on the low end of a reasonable value range.

Board's Rulings

Based on the evidence, we find the Taxpayers did not carry their burden. The Taxpayers did not submit any evidence of the cost to cure the water access right issue (e.g. legal research and surveying costs). Even if such evidence had been submitted, based on the evidence submitted, the board was not convinced a reasonably prudent purchaser as of April 1994 would have been significantly aware or concerned with the issue given both the historic use of the dock and adjacent land and the Poirier's (the purported owners of the land) willingness to provide the Taxpayers with a license to use the land and discuss a more permanent arrangement.

The board's jurisdiction is limited to determining whether an assessment is proportional to market value. RSA 75:1. Based on the evidence, including the Taxpayers' assertion that the assessment is not unreasonable, the board finds the Town's value is supported by sales and consistent assessment methodology. Obviously, if the resolution of the Superior Court action determines the Taxpayer has less water rights, the assessment should be reviewed for subsequent tax years.

A motion for rehearing, reconsideration or clarification (collectively "rehearing 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 rehearing motion must state with specificity all of the

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reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing 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 rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing 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

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Francis and Ellen Laase, Taxpayers; and Chairman, Selectmen of Tuftonboro.

Date: September 16, 1996

Valerie B. Lanigan, Clerk

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