

Joseph and Sheila Kabat

v.

Town of Ashland

Docket No.: 15169-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$146,100 (land \$122,100; buildings \$24,000) on a 1.19-acre lot with a cottage on Little Squam Lake (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, but the board confirms the \$133,900 adjusted assessment recommended by the Town.

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 assessment did not reflect the Property's topography, rocky shoreline

and steepness or the Property's inability to support a leach field;

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- (2) the cottage is seasonal with no insulation and with open-stud construction;
- (3) there was no adjustment made for the private seasonal access road, which is closed four months out of the year;
- (4) the Property was purchased December 22, 1993, for \$106,000;
- (5) a December 1993 appraisal estimated a \$107,000 value;
- (6) the land value should be \$82,000 (\$106,000 purchase price - \$24,000 cottage value);
- (7) a comparable lot sold for \$160,000 but was assessed \$282,600 as of April 1, 1993; and
- (8) larger lots with more shore frontage were assessed less, yet those lots could be divided into two lots and could support leach fields.

The Town recommended a 10% adjustment to the land value to be consistent with a prior board decision. The Town argued the adjusted \$133,900 (land \$109,900; building \$24,000) assessment was proper because:

- (1) the building calculations adequately addressed the seasonal nature and construction quality, and the building was assessed consistent with other cottages on the lake;
- (2) the front-foot values were established by sales of waterfront lots;
- (3) sales indicated lakefront land was worth twice that of nonlakefront land;
- (4) the access road is not seasonal and market values did not support the Taxpayers' contention that this type of road detracted from the value;
- (5) the Taxpayers' appraiser's adjustments to the comparables were not

indicative of the market; and

(6) larger lots were not subdividable due to shorefront regulations and soil restrictions.

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BOARD'S RULINGS

Based on the evidence, the board finds the Taxpayers did not show overassessment, but the board confirms the Town's recommended \$133,900 assessment.

The burden is on the Taxpayers to show overassessment. The Taxpayers attempted to do this by pointing to their purchase price and by submitting two value opinions/appraisals. Concerning the purchase price, the Taxpayers did not submit sufficient information to show that their \$106,000 purchase price was a market purchase. The department of revenue administration, in its annual sales survey, noted: "Distressed sale - grantor lost several properties in other towns." Therefore, the board finds the Taxpayers' purchase price was not good evidence of market value.

The board also could not accept the analysis performed by Mr. Cutting or by Mr. Seufert for the following reasons.

Suefert

The appraiser did not support or show the source of the large adjustments that were made for insulation costs, garage differences, public road access and kitchen condition.

Cutting

1) This appraiser used the Property's sale as comparable #1. This was an error for several reasons. Under appraisal methodology, the subject

property should not be used as a comparable. Additionally, the appraiser apparently was unaware of his error because he made adjustments to the subject for certain features.

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2) Cutting did not support the large adjustments that he made either.

The board is very familiar with waterfront properties in New Hampshire, and the revised equalized assessment of \$130,000 does not seem excessive. Finally, the Town explained its methodology, and it made adjustments for the lot size and the seasonal nature of the cottage.

If the taxes have been paid, the amount paid on the value in excess of \$133,900 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, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1995 and 1996. 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, 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

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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 a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph and Sheila Kabat, Taxpayers; Mary E. Pinkham-Langer, Agent for the Town of Ashland; and Chairman, Selectmen of Ashland.

Date: February 29, 1996

Lynn M. Wheeler, Deputy Clerk

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