

Reynold P. Chalbeck

v.

Town of Ashland

Docket No.: 15172-94PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$204,800 (land \$181,100; buildings \$23,700) on a .95-acre lot with a camp (the Property). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. For the record, the board has previously decided several other 1994 appeals from the Little Squam South Shore Association ("LSSSA"). While the board has not relied on these cases in making its decision, the evidence is similar and the decision may be similar or the same. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer

carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) the land value failed to address the topography, steepness, rocky shoreline or private access road;

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(2) the house has no insulation, sits on piers, has open stud construction on the second floor and was built in 1915;

(3) the Property shares a steep driveway with an abutter, which is difficult to access;

(4) the access road is not Town maintained and is closed four months per year;

(5) a September 1994 appraisal estimated a \$180,000 value as of April 1, 1994;

(6) a comparable lot with 225 feet of shorefront was listed for sale for only \$225,000 and a comparable lot assessed for \$282,600 sold for \$160,000;

(7) the association has a leach field on land 300 feet from the Property, which has a negative impact on the Property's value; and

(8) the land value should be adjusted 20% to address the Property's topography and access road.

The Town argued the assessment was proper because:

(1) the building calculations adequately addressed the camp's seasonal nature and construction quality, and the camp was assessed consistent with other camps on the lake;

(2) the Town was revalued in 1993 and all sales that occurred from January 1991 through December 1992 were analyzed; the front-foot values were

established by sales of waterfront lots;

(3) there was no evidence submitted to show that the various easements affected the Property's value.

(4) the Taxpayer's appraiser's adjustments to the comparables were not indicative of the market and not supported by sales analyses or interior inspection of the Property; and

(5) the appraiser's \$180,000 value, when equalized by the 1.03 1994 equalization ratio, is within 10% of the assessed value.

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#### **BOARD'S RULINGS**

Based on the evidence, the board finds the proper assessment to be \$186,700 (land \$163,000; building \$23,700). Because of the disparate market data and conflicting testimony on this Property and several other properties under appeal from the LSSSA neighborhood, it is difficult to arrive at a certain estimate of market value. However, based on a review of the sales data submitted by the parties, the board has determined that the Town's land assessment should receive a 10% market adjustment. The board's reasons follow.

The board has reviewed the Town's sales analysis performed at the time of the reassessment, the five sales that occurred from late 1992 through 1995 (Belville, Kapp, Kabat, Swanson and May), Ralph J. "Cutting's" appraisal, and the several factors unique to the LSSSA neighborhood. With the exception of the Belville sale, the sales contained in the Town's assessment analysis on Squam Lake occurred in 1990 and 1991. There were no sales within the

association neighborhood during the reassessment time frame. Based on the data available to the Town at the time of the reassessment, the conclusion of \$1,200 per front foot for the base price was not unreasonable. However, based on the five subsequent sales, some adjustment for time or location is appropriate.

As the board did in several LSSSA cases heard by the board<sup>1</sup>, the board performed a front-foot analysis of the May, Kabat, Kapp, Belville and Swanson sales using the market adjustment factors on the assessment-record cards and employing the same methodology used by the Town on the four Ashland sales (modifying the information on the Holderness assessment-record card to be consistent with the land factors used in Ashland). This front-foot analysis concluded the following: May sale (\$625/ff); Kabat sale (\$785/ff); Kapp sale (\$925/ff); Belville sale (\$1,040/ff); and Swanson sale (\$1,075/ff). The

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evidence received indicated that the May, Kabat and Belville sales could be considered below market value because the parties were unduly motivated to sell. However, the Town's assessment seems to be excessive considering the remaining sales. The Town relied on the Swanson sale considering it to be a good comparable. This sale indicated a lower base price than that used by the Town. The evidence suggests that factors unique to the LSSSA neighborhood contributed to their sales being lower than other properties analyzed by the Town.

The Town argued that Mr. Cutting did not provide any sales analysis to support his land estimate or his adjustments. While the Town's criticisms may

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<sup>1</sup> May v. Ashland, #15171-94PT; Lambert v. Ashland, #15173-94PT; Callahan v. Ashland, #15176-94PT

have some validity, Mr. Cutting had the same disparate market data to analyze as the Town did, and the board finds that his value conclusions attempted to recognize the different significant factors between the comparables and the subject Property.

Evidence was submitted about the lots in the LSSSA having a general north orientation, having private road access and having access to a common 15-acre lot for septic facilities if the primary lot is not capable of having a septic. The board finds collectively that these factors with their associated costs and easements are factors affecting the desirability and market value of the lots. As noted above, the sales within LSSSA have been generally lower than other sales. The board concludes that, while the arm's-length nature of some of the sales may influence the price, so do these other factors. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) (in arriving at the proper assessment, municipalities must consider all relevant factors).

Therefore, the board concludes based on the above findings and to be consistent with the board's rulings in the May, Lambert and Callahan cases, that the land value should be reduced by 10%.

If the taxes have been paid, the amount paid on the value in excess of \$186,700 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

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TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1995. 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 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

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Reynold P. Chalbeck, Taxpayer; and Chairman, Selectmen of Ashland.

Dated: April 7, 1997

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Valerie B. Lanigan, Clerk