

George and Mary Beth Whiteside

v.

Town of Ashland

Docket No.: 15175-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$198,200 (land \$151,500; buildings \$46,700) on a 1.24-acre lot with a single-family home (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.

The Taxpayers argued the assessment was excessive because:

- (1) the Town increased the building value by \$2,600 for "work done;" the work

was repairing a deck already included in the assessment;

(2) the Property's access is poor due to steep grades -- three flights of stairs lead from the parking area to the house;

(3) a realtor estimated a \$170,000 to \$180,000 market value;

(4) comparable properties sold for less than their assessed values;

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(5) based on comparable sales, the Property's market value is between \$140,000 and \$150,000; and

(6) the shorefront footage should be 92 feet and not 99.75 feet angled as shown on the assessment-record card.

The Town argued the assessment was proper because:

(1) the building calculations adequately addressed the construction quality, which is better than most in the area, and was assessed consistently with other cottages 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) a deck on the waterfront has more value than the actual cost to construct, and the Property's depreciation was adjusted based on a 1994 inspection;

(4) the lake frontage was taken from the Trojano survey; Mr. Trojano surveyed all the waterfront lots in the area which was used by the department of revenue administration (DRA) to calculate the frontage on all the lots;

(5) the Taxpayers' realtor's value opinion is not an appraisal, but if the Property did sell for \$180,000, the Property's equalized assessment would be within 7% of the sale price;

(7) the Taxpayers' comparable sales were not arm's-length transactions; and
(8) the actual assessment is within 4% of the assessment estimate provided by the Taxpayers.

The Taxpayer provided a rebuttal to the Town's brief and argued:

(1) one of the comparable lots actually sold in September 1995 for \$107,000 and was assessed \$181,600;
(2) the comparables are in close proximity to the Property and all sold within one year of each other -- the Town's comparables are not comparable; and

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(3) Mr. French is a surveyor, and he recalculated the actual frontage and acreage based on the original survey provided by Trojano.

BOARD'S RULINGS

Based on the evidence, the board finds the proper assessment to be \$195,600 (land \$151,500; building \$44,100). The Taxpayers' appeal focused on four main issues: 1) the increase in assessed value due to deck repairs; 2) the calculation of water frontage; 3) a broker opinion of value; and 4) comparable sales.

Deck

The Town stated that an inspection of the Property was made in the spring of 1994 at which time the physical depreciation to the building was changed from 85% to 90% to account for work done on the structure. The Taxpayers argued that the only improvements made to the Property were replacement of approximately one-third of the deck's rotted floor joists and replacement of the railing. The Taxpayers also stated they removed the

shutters on the house. The board notes the deck was previously assessed for \$2,000 and the Town, by decreasing the depreciation, in effect added an additional \$2,600 value to the deck. Based on the evidence, the board finds the change in the depreciation was unwarranted and finds the proper depreciation to be 85%.

Water Frontage

The Taxpayers presented an August 1995 letter from Kevin French of Land Services Inc. who, using the Trojano plot plan employed by the Town, calculated the direct line distance of the water frontage and the perpendicular distance across the lot. The Taxpayers asked the board to "split the difference" between the 92.03 foot perpendicular distance and the 99.76 foot angled width and order the Town to use a figured frontage of 96 feet.

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The land information used by the Town was taken from the Trojano survey and all lots were assessed based on this survey. It would be inappropriate for the board to order the Town to assess the frontage in a manner different from all other taxpayers in the Town. Further, the water frontage indicated on the Trojano plan was 100 feet plus or minus. It is common practice to round to the nearest foot; therefore, the board finds the allocation of 100 feet of water frontage to be appropriate.

Broker Opinion

The Taxpayers submitted a November 1994 value opinion by Robert Sachs of

Coldwell Banker. Mr. Sachs estimated a sales price of between \$170,000 and \$180,000 and recommended listing the Property at \$187,900 because "properties can bring more than what the exercise concludes." He also indicated that there was a good opportunity to sell the Property due to its four seasons nature. The board notes that Mr. Sachs is not an appraiser; therefore, he did not perform an appraisal of the Property using comparable sales and making adjustments for differences in location, size, condition, topography, etc. However, the board has given Mr. Sachs opinion some weight, although not conclusive, because he did explain his analysis in detail based on his knowledge of both the Property and sales and listings of properties in the area.

Comparable Sales

The Taxpayers compared their Property to three sales (May¹, Swanson and Crowley). As the Town noted in its brief, many neighboring properties also appealed their assessments and the board has taken official notice of the evidence presented in those appeals. The board has reviewed both the Town's sales analysis performed at the time of the reassessment and the sales evidence submitted. The sales contained in the Town's assessment analysis on Squam Lake occurred, with the exception of the Belville sale, in 1990 and

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1991. There were no sales within the neighborhood during the reassessment time frame. Based on the data available to the Town during the reassessment, the board finds a base price of \$1,200 per front foot was not unreasonable.

¹ The May appeal was heard by the board - Docket No. 15171-94PT

Of the comparable sales submitted, the board finds the May and Belville sales could be considered below market value primarily due to the sellers being unduly motivated (the May property had been on and off the market over a two year period and the owner was retiring and looking to "unload" the property; Mrs. Belville had moved to Florida and wanted to "get rid" of her property). Further, the May property was part of the Little Squam South Shore Association (LSSSA) and the board found that sales within LSSSA have been generally lower than other sales because of factors unique to the LSSSA neighborhood.

The Swanson property, which the Town also relied on as a good comparable, sold in August 1994 for \$205,000. The board has determined the proper assessed value of the subject Property to be \$195,600 or an indicated market value of \$189,900². This value is 3% lower than the Swanson sale. The Taxpayers also referred to the September 1995 Crowley sale for \$107,000 but the board was not supplied with sufficient information to make a determination as to the arm's-length nature of this sale especially given the significant drop in the original listing of \$249,000 and the sale price.

Conclusion

The board finds the revised assessment of \$195,600 (indicated market value of \$189,900) to be reasonable based on its review of the sales data, comparable assessment data and broker opinion of value.

² Assessments must be based on market value. See RSA 75:1. Due to market fluctuations, assessments may not always be at market value. The assessment on a specific property, however, must be proportional to the general level of assessment in the municipality. In this municipality, the 1994 level of assessment was 103% as determined by the revenue department's equalization ratio. This means assessments generally were higher than market value. The ordered assessment when equalized is \$189,900 rounded (\$195,600 ordered assessment ÷ 1.03 equalization ratio). This equalized assessment should provide an approximation of market value.

If the taxes have been paid, the amount paid on the value in excess of \$195,600 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. 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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to George and Mary Beth Whiteside, Taxpayers; and Chairman, Selectmen of Ashland.

Date: April 7, 1997

Valerie B. Lanigan, Clerk

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