

Deborah A. Sharpe Callahan

v.

Town of Ashland

Docket No.: 15176-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$153,000 (land \$129,600; buildings \$23,400) on a .22-acre lot with a cottage (the Property). 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 and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) an April 1994 appraisal estimated a \$118,000 value;
- (2) the Property is seasonal, on a private road, the terrain is steep leading down the road, the shoreline is rocky, and the lot is wet and has no development potential;
- (3) easements and rights-of-way affect the Property's value; and

(4) the Town made no market adjustment to the Property, but made adjustments to other properties in the association.

The Town argued the assessment was proper because:

(1) the Town was revalued in 1993 and all sales that occurred from January 1991 through December 1992 were analyzed; sales on Squam Lake were analyzed to establish the front-foot value;

(2) the Taxpayers' appraiser used adjustments to comparable sales that were not market supported and not comparable;

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

(4) the Town recommends a 10% adjustment to the land because of its small size and based on a previous board decision.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$128,400 (land \$105,000; buildings \$23,400). This and the other two properties under appeal from the Little Squam South Shore Association ("LSSSA") neighborhood are not easy properties to arrive at a certain estimate of market value because of the disparate market data and conflicting testimony. However, the board has determined, based on a review of all the sales data submitted by both parties, that the Town's land assessment should receive 10% market adjustment. The reasons for this adjustment follow.

The board 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), RJC's appraisals, and the several factors unique to the LSSSA neighborhood.

The sales contained in the Town's assessment analysis on Squam Lake occurred, with the exception of the Belville sale, in 1990 and 1991. No sales occurred 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.

The board performed a front-foot analysis on the five sales listed above using the market adjustment factors contained on the assessment-record cards (the board used the Town's methodology on the four Ashland sales and modified the information on the Holderness assessment-record card to be consistent with the land factors used in Ashland). The conclusion of the board's front-foot analysis is:

May sale	\$625/ff
Kabat sale	\$785/ff
Kapp sale	\$925/ff
Belville sale	\$1,040/ff
Swanson sale	\$1,075/ff

Testimony and/or evidence was received indicating that the May, Kabat and Belville sales could be considered below market value primarily due to the sellers being unduly motivated. However, even considering the remaining sales, the Town's assessment appears to be excessive. The Swanson sale, which the Town relied on as a good comparable, indicated a lower base price than

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that used by the Town. Further, based on the testimony of Mr. May and Mr. Kabat, it appears that factors unique to the LSSSA neighborhood contributed to their sales being lower than other properties analyzed by the Town.

The board gave some weight to RJC's appraisal notwithstanding the Town's criticism of the appraisal, including the Kabat sale and the magnitude of the adjustments made to the comparables. Mr. Cutting had the same disparate market data to evaluate as the Town. We agree with the Town that the magnitude of Mr. Cutting's adjustments and their lack of documentation raise questions as to their conclusions; nonetheless, the value conclusions attempted to recognize the different significant factors between the comparable properties and the Property. Thus, the board does not totally discount the appraisal conclusion.

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 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 market factors).

Consequently, based on the above findings, the board concludes the land value should be reduced by 10%. Further, to be consistent with the board's

rulings in Ingemi v. Ashland, Docket No. 14682-93PT and Kabat v. Ashland, Docket No. 15169-94PT, the board applies an additional 10% adjustment to the land for the small size of the lot. As found in those cases, the Town's methodology tended to overstate the value of the small lots. Based on these adjustments the proper assessment is \$128,400 (land \$129,600 x .90 x .90 + building \$23,400).

If the taxes have been paid, the amount paid on the value in excess of \$128,400 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 "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 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

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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

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Deborah A. Sharpe Callahan, Taxpayers; and Chairman, Selectmen of Ashland.

Date: October 18, 1996

Valerie B. Lanigan, Clerk

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