

Jeanne Fabian and Patricia A. Courtney

v.

Town of Ossipee

Docket No.: 15879-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessments of: \$161,900 (adjusted) (land \$115,500; buildings \$46,400) on Lot 93, a 1.7-acre lot with a single-family house; and \$95,100 on Lot 94, a vacant, 1.2-acre lot (the Properties). For the reasons stated below, the appeal for abatements is granted in part and denied in part.

The Taxpayers have the burden of showing the assessments were 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).

The Taxpayers argued the assessment on Lot 93 was excessive because:

- (1) a good portion of the lot is a peninsula that is under the normal water level of the lake;
- (2) the house/lot frequently floods in the spring;
- (3) the sand bar off the end of the lot attracts boaters to congregate;
- (4) sales of lots in superior locations have sold for less than the lot is assessed for;

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- (5) the Property should be assessed for \$131,000 (land \$85,000; buildings \$46,000);
- (6) a realtor had estimated a market value for the lot at \$148,000; and
- (7) none of the Town's comparables are located on the channel; most of the sales were on the large lake or large bays.

The Taxpayers argued the assessment on Lot 94 was excessive because:

- (1) the lot has been listed for sale since December 1995 for \$75,000 with no offers;
- (2) the lot is located on the channel between Lake Ossipee and Broad Bay which is quite shallow and has a lot of boat traffic;
- (3) the lot was originally purchased for protection; and
- (4) the lot should be assessed for \$60,000.

The Town argued the assessment on Lot 93 was proper because sales of unimproved and improved properties support the revised assessments.

The Town argued the assessment on Lot 94 was proper because it is a good house lot, and the Town revised the land factors within acceptable limits.

Board's Rulings

Lot 94

Based on the evidence, we find the proper assessment to be \$73,300. This assessment is arrived at by adjusting the Town's base condition factor of 425% by -150 for shape and channel location of the lot and -20 for the lot being vacant. The board finds the sales and listing evidence submitted by both the Town and the Taxpayers indicate a market value for this Property would be better estimated by this revised assessment than the appealed assessment. The board has also

corrected the lot size from 1.2 acres to 1.01 Page 3
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based on the plan submitted by the Taxpayers. The board finds the boat traffic on

the channel is a factor that the market would consider in comparing the Taxpayers' lot to lots on Lake Ossipee or on the larger bays of the Lake Ossipee system.

Lot 93

Based on the evidence, the board finds the Taxpayers failed to carry their burden. The board reviewed the sales submitted by the Town and the Taxpayers and concludes the assessment is in a reasonable valuation range as indicated by those sales. The board considered both the positive and negative aspects of the lot, namely, the privacy and control afforded by the long configuration of the peninsula, the seasonal flooding of the house and the distance of the sandbar where boats congregate from the dwelling. Further, the board reviewed the realtor's comparative analysis which indicated a market value of \$148,000 and gives it little weight. The board noted the square footage of the Taxpayers' Property was incorrectly stated by the realtor and the adjustments for the higher than average taxes and flood insurance were unsubstantiated and too subjective to be given much weight.

If the taxes have been paid, the amount paid on the value of Lot 94 in excess of \$73,300 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 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

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date,

postage prepaid, to Jeanne Fabian and Patricia A. Courtney, Taxpayers; Alice MacKinnon, Agent for the Town of Ossipee; and Chairman, Selectmen of Ossipee.

Date: September 27, 1996

Valerie B. Lanigan, Clerk

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