

John H. Smallwood
Eugene W. Arsenault

v.

Town of Ossipee

Docket No.: 15884-94PT

PRELIMINARY DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$119,400 (land \$92,900; buildings \$26,500) on a .613-acre lot with a cottage (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 was unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

- (1) the Town erroneously assessed the Property with 150 feet of lake frontage when there is only 100 feet;
- (2) the Property's steep topography prohibits driving to the Property and affects the septic cleaning;

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- (3) the Town should measure the Property's lake frontage and correct the assessment; and
- (4) the Property's assessment should be \$109,500 after correcting the lake frontage.

The Town argued the assessment was proper because:

- (1) the Property was assessed using the same standards established during the 1994 revaluation;
- (2) the steep topography was already addressed by applying a condition factor to the Property's assessment;
- (3) the same methodology was used throughout the Town;
- (4) the building's age and condition are reflected in the building value;
- (5) the Taxpayers only focused on the land value and not the Property's entire value;
- (6) the Taxpayers failed to provide documentation as to the Property's fair market value as of April 1; and
- (7) even if the land value is incorrect due to inaccurate measurements, it does not prove overassessment.

BOARD'S RULINGS

The board finds the Taxpayers' assessment should be abated based on a

reduction in frontage from 150 feet to 100 feet and a reduction of lot size from .613 to approximately one-half acre in size. The board is unable to calculate the correct assessment using the Town's methodology because the land unit price changes with a change in the lot size. Therefore, the municipality shall within thirty days of this preliminary decision recalculate the assessment based on the findings of this decision and submit a revised assessment-record card to the board and to the Taxpayers.

The board is ordering this abatement because it finds that one of the primary factors affecting value of a waterfront property is its frontage. The municipality cannot hide behind the Taxpayers' burden of proof of submitting market value evidence and continue to ignore a discrepancy in one of the

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significant value factors of the Property. While the Town is correct that taxpayers normally need to present evidence of market value to show disproportionality, the board finds, in this case, where the Town's original assessment is based on incorrect factual data, it should be corrected. The board reminds the Town, the municipality must in the first instance fulfill its statutory obligation to "appraise property fairly for taxation purposes."

Appeal of City of Nashua, 138 N.H. 261, 266 (1994). Because the Town determines its assessments by the consistent application of its assessing standards and with the mechanics of its assessing software, the initial assessment must be based on the most accurate physical data for it to be given the presumption of correctness.

The board finds the Taxpayers have presented adequate evidence in this case to bring into question the assumed correctness of the original assessment. The Taxpayers stated they have measured the frontage at 100 feet;

they have owned the Property since 1953 with the understanding they owned 100 feet; and they have submitted a sketch in 1976 to the Town's mapping contractor during the preparation of the tax maps indicating the lot contained only 100 feet of frontage. Further, the Taxpayers stated they have been unable to find any earlier plans or surveys depicting the lot and that their deed does not give any descriptive distances relative to the waterfront. Based on this evidence, the board finds that the water frontage most likely approximates 100 feet rather than 150 feet and should be so adjusted. If the Town has any question as to the frontage and/or size of the lot, it shall within the time prescribed in this decision perform its own measurements to estimate what it determines to be the proper frontage and acreage.

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As stated earlier, the Town shall within thirty days of this decision recalculate the assessment-record card and submit a copy of the assessment-record card to the board and the Taxpayers. The Taxpayers shall have ten days from receipt of the revised assessment-record card to file any comments they wish with the board with copies to the Town before the board issues a final decision in this case.

Any motion for rehearing or appeal in this case should be filed with the board's final decision and not with this preliminary decision.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John H. Smallwood and Eugene W. Arsenault, Taxpayers; Alice MacKinnon, Agent for the Town of Ossipee; and Chairman, Selectmen of Ossipee.

Date: January 27, 1997

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Town's" submission of a revised assessment-record card for the "Property" as ordered by the board's preliminary decision dated January 27, 1997.

While the Town did provide a revised assessment-record card, it is unclear to the board how the revised area was recalculated. Therefore, the board orders the Town to submit, within 30 days of the clerk's date below, its methodology and calculations for determining the revised area. The submission should include the source of any factual data and the basis for any measurements taken such as a deed or survey. Additionally, the Town is directed to supply the board and "Taxpayers" with a copy of the chart or rate schedule that shows the unit price changes as they vary with different lot sizes.

As stated earlier, the Town shall within 30 days of this order provide the information requested to the board and the Taxpayers. The Taxpayers shall

have 10 days from receipt of the information to file with the board any comments they may have regarding the Town's submission.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to John H. Smallwood and Eugene W. Arsenault, Taxpayers; Alice MacKinnon, representative for the Town; and Chairman, Selectmen of Ossipee.

Date: April 3, 1997

Valerie B. Lanigan, Clerk

John H. Smallwood and Eugene W. Arsenault

v.

Town of Ossipee

Docket No.: 15884-94PT

DECISION

On January 27, 1997 the board issued a preliminary decision in this appeal. In the preliminary decision the board found the "Town" should abate the assessment based on revising the frontage of the lot from 150 feet to 100 feet and reducing the lot size from .613 to approximately one-half acre. The board ordered the Town to revise the assessment and provided the "Taxpayers" an opportunity to comment on the revised assessment. The Town revised the assessment to a total of \$112,000 (land \$85,500; buildings \$26,500). The Taxpayers replied by letter received March 7, 1997 stating that they believed the revised assessment is correct.

The board finds the Town's revised assessment appropriately accounts for the lot's size, and thus, orders the assessment to be abated to \$112,000.

If the taxes have been paid, the amount paid on the value in excess of \$112,000 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.

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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

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to John H. Smallwood and Eugene W. Arsenault, Taxpayers; Alice MacKinnon, representative for the Town; and Chairman, Selectmen of Ossipee.

Date: May 27, 1997

Valerie B. Lanigan, Clerk

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