

**Fuller Family Trust  
v.  
Town of New Durham  
  
Docket No. 4769-88**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1988 assessment of \$136,900 (land, \$114,300; buildings, \$22,600) on Map 28, Lot 2, located on South Shore Road on Merrymeeting Lake (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer failed to appear, but consistent with our rule, TAX 102.03(g), the Taxpayer was not defaulted. This decision is based on the evidence presented to the board.

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 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved it was disproportionally taxed.

The Taxpayer argued the assessment was excessive because:

1) "The value attributed to this lot is not consistent or equitable when compared to assessed value on comparable adjacent property."

2) "The subject lot has 60' frontage on Merrymeeting Lake, south shore, and a total area of .1337 acre. This would not be a buildable lot, if

it was vacant. This is based upon current health department requirements for a septic system and town requirements for area and set back."

The Town argued the assessment was proper based on nine comparable-sale properties on the lake. The Town indicated the Taxpayer had two lots right next to each other and that access into Lot #2 is currently through Lot #1. The Town admitted that the current system for New Durham is that they do not have an adjustment for lake frontage and suggested that a 25-percent adjustment would be appropriate for Map 28, Lot 2, which has only 60 feet of frontage. Therefore, a 25-percent adjustment would reduce the land value to \$85,700, the building value remains the same at \$22,600, resulting in a revised assessment of \$108,300 for Map 28, Lot 2.

Based on the evidence, we find the correct assessment should be \$108,300 (land \$85,700 and building \$22,600).

If the taxes have been paid, the amount paid on the value in excess of \$108,300 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

August 13, 1991

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun

Arthur E. Bean, Jr., Temporary Member

I certify that copies of the within decision have been mailed this date, postage prepaid, to Fred F. Fuller, Trustee, Fuller Family Trust, to the Chairman, Board of Selectmen, Town of New Durham, and to Scott Bartlett, MMC.

August 13, 1991

Brenda L. Tibbetts, Clerk

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