

Donald P. Carlson
v.
Town of New Durham

Docket No. 5560-88

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1988 assessment of \$149,500 (land, \$91,100; buildings, \$58,400) on Map 35, Lot 14 located on 174 Pine Point Road on Merrymeeting Lake, (the Property). For the reasons stated below, the appeal for abatement is granted.

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 he was disproportionally taxed.

The Taxpayer argued the assessment was excessive because:

1) The comparables used by the Town were on town maintained roads and his property, on a private road, is not accessible in the winter, and is classified as a ranch;

2) The Town's comparables have level lots; he has a steep driveway and steep stairs to the water;

3) The Taxpayer introduced three property assessment cards and photos - Penniman, Wysocki, along with his own. The Penniman property has 125 feet of frontage with a boathouse and is classified as a camp. The Wysocki property, classified as a camp, has the same amount of frontage, but is level to the water. The construction and foundation of the house is the same but Wysocki has wood heat, the Taxpayer has central heat;

4) The Taxpayer introduced an estimate by P.G. Halkett Construction of the cost to build a similar house and deck for \$39,300. The Taxpayer estimated \$2,000 for an additional deck on the property.

The Town argued the assessment was proper based on nine comparable sale properties on the lake. The Krause comparable which is right next to the subject is currently assessed at \$167,000, and it does have a boathouse. The Town admitted that no premium was given to any land with a boathouse. The Town indicated that both the Penniman and Wysocki properties are unheated and that if the Carlson property could be accessed, it could be used year round. The Town argued that the land has been landscaped, the driveway is very steep, but in comparison to the Krause property, it was assessed comparably.

Based on the evidence that there was no access to the property in the winter and the steepness of the land to the water, the Board finds the correct assessment should be \$117,000 (land, \$82,000 and building \$35,000).

If the taxes have been paid, the amount paid on the value in excess of \$117,000 shall be refunded with interest at six percent per annum from date paid to refund date. The Board suggests that the town review those properties with boat houses to insure that no improvements go untaxed.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

Arthur E. Bean, Temporary Member

Date: August 16, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to the Donald P. Carlson, taxpayer; the Chairman, Selectmen of New Durham; and Scott Bartlett, Appraiser for M.M.C., Inc.

Brenda L. Tibbetts, Clerk

Date: August 16, 1991

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