

**Winifred T. Arseneault**

**v.**

**Town of Northwood**

**Docket No.: 7018-89**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$267,350 (land, \$228,850; buildings, \$38,500) on a seasonal cottage on .92 acres of land on Bow Lake (the Property). 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. 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 disproportionality.

The Taxpayer argued the assessment was excessive because:

1) unlike other year round properties on the lake, the camp is seasonal and is in need of serious renovations (i.e. new sills, repairs to understructure);

- 2) approximately 15 to 20 feet of the beach has been lost due to erosion and shifting of the sand and the well is now in the water creating unusable well water for drinking and because of the color and odor the water is seldom used for other purposes;
- 3) in 1989, a realtor in Northwood indicated that they would be fortunate to get in the \$190,000 range for the Property;
- 4) most neighbors are able to rent their properties year round therefore a high tax bill is less of a burden to them;
- 4) the camp is only useable about 6 weeks a year; and
- 6) the tax burden is onerous, unequitable and unfair.

The Town argued the assessment was proper because:

- 1) the Property is located on Bow Lake with direct access to the lake;
- 2) the Taxpayer presented no evidence of a market analysis or an appraisal to show how her appraiser arrived at the value in 1989;
- 3) when the Town inspected the Property, they went by the tax map and what they observed and the well is still a source of water for flushing toilets and should be adjusted to \$500 as a lake hookup;
- 4) the sills are in poor condition with rotting problems and a -30 adjustment for physical depreciation is suggested to arrive at a total building value of \$32,100;
- 5) the total recommended assessment is \$260,450 (land, \$228,350; buildings, \$32,100); and
- 6) the plan provided by the Taxpayer indicates a right-of-way through the Property, a typical adjustment to the right-of-way is 5 percent to the land.

The Taxpayer complained about the high amount of taxes he must pay.

The amount of property taxes paid by the Taxpayer was determined by two factors: 1) the Property's assessment; and 2) the municipality's budget. See gen., International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor i.e., the board will decide if the Property was overassessed, resulting in the Taxpayer[s] paying a disproportionate share of taxes. Appeal of Town of Sunapee, 120 N.H. at 217. The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

Based on the evidence, we find the correct assessment should be \$249,285 (land, \$217,185; building, \$32,100). This assessment is ordered to reflect the Town's adjustments with a 5 percent adjustment to the land for the imposition of the right-of-way.

If the taxes have been paid, the amount paid on the value in excess of \$249,285 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

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CERTIFICATE

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Winifred Arseneault, Taxpayer; Chairman, Selectmen of Northwood; and Mary E. Pinkham, Department of Revenue Administration.

Dated: April 30, 1992

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Valerie B. Lanigan, Clerk

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