

James C. Andrews

v.

Town of Conway

Docket No.: 7630-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessments of \$37,500 (land only) on Map 8, Lot 43 and \$31,300 (land only) on Map 8, Lot 44A located on Cove Road (the Property). The Taxpayer also owns but did not appeal Map 8, Lot 44E (land only). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessments were 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 assessments were excessive because:

- (1) the lots are wooded with a swamp section fairly well centered and close to the dirt road;
- (2) Real Estate Broker Haines market value letter states opinion of \$20,000 for both lots;
- (3) there is no access to undeveloped woodlands or back land;

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(4) there is no access to the lake and the so-called "public beach" is not public but is privately owned, used as a community beach by the houses in the vicinity of the beach; and

(5) there is no legal right to use the beach and it is disputed that the general public has any right to the beach.

The Town argued the assessments were proper because:

(1) the assessments were arrived at based on sales on Conway Lake since 1987;

(2) both lots were adjusted 20 percent for vacant lots and 25 percent for topography;

(3) auction sales today are about 40 percent of revaluation assessment; and

(4) the public beach gives access to the lake from area back lots and the subject lots are about 1,000 feet from the public beach.

Board's Rulings

The board allowed the Town 10 days to submit evidence of its understanding as to whether the beach is in fact public or private. The Taxpayer was allowed 10 days from receipt of the Town's submission to respond to the board. The Town submitted a typical deed for properties bought and sold in the area of the so-called "common beach", which depicts the right-of-way and the use of the common beach. The Town stated: "It is inferred in the 1972 deed, that these same rights were granted to the Andrews property at the time of transfer from Milton Dana Morrill, et al, by deed dated December 21,

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1959.". The board received a response from the Taxpayer on September 30,
1992. The response was returned to the Taxpayer for failure to copy the Town
and the Taxpayer was allowed 10 days to copy the Town and refile his

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submission with the board. Having failed to comply, the board issues this decision without further evidence from the Taxpayer.

The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessments and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

The board's inspector inspected the property, reviewed the property tax cards, and filed a report with the board. This report concluded the proper assessments for Map 8, Lot 43 should be \$25,000 and for Map 8, Lot 44A should be \$27,550.

Based on the evidence, we find the correct assessments should be:

Map 8, Lot 43 - \$32,500

Map 8, Lot 44A - \$27,105

The board finds that a topographical depreciation of 35 percent is warranted on both lots for the brook running through the lots and the low and wet areas. Further, the board finds both lots appear to have access to the rear sufficient to develop either. If a prudent taxpayer was convinced that there was "no access to undeveloped back land or woodland", he would combine the

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lots under a single deed and put the entirety into current use. The fact that the Town does not tax the waterfront parcel referred to as the "public beach"

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gives cogent evidence of the availability of water access for the subject "back lots".

If the taxes have been paid, the amount paid on the value in excess of \$59,605 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

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to James C. Andrews, Taxpayer; and Chairman, Selectmen of Conway.

Dated: November 19, 1992

Valerie B. Lanigan, Clerk

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Resent November 24, 1992