

Carol J. Schubert

v.

Town of Enfield

Docket Nos.: 10138-90PT & 12423-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessments of \$161,200 (land, \$122,599; buildings, \$38,700) on a 1-1/2 story home with an 11,600 square foot lot on Crystal Lake (the Property). For the reasons stated below, the appeal for abatement is granted to the Town's recommended assessment.

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).

The Taxpayer argued the assessment was excessive because:

- (1) an appraiser estimated the value to be \$114,000 as of March 31, 1990 and \$99,000 as of March 31, 1991;
- (2) the land assessment is excessive and has the highest influence and condition factors on that portion of the lake;
- (3) the assessed value is excessive when compared to other properties sold and others assessed in the Town; and

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(4) the Town has not produced any credible evidence that the Taxpayer's comparables are not market sales.

The Town argued the assessment was proper because:

- (1) the Taxpayer's appraisal is flawed because the appraiser used sales that were an estate sale, a family sale, incorrect lot size and incorrect gross living area;
- (2) based on the slope from the road to the waterfrontage and the associated drainage, 10% off the condition factor of 200 (180) is recommended; and
- (3) the Property was equitably assessed.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$155,100 (land \$116,400; and building \$38,700). This assessment is ordered because the board agrees with the Town's recommendation to adjust the condition factor based on the topography of the land.

The board finds no further adjustments are warranted because the Taxpayer's appraisal was of little probative value to the board as it was based on incorrect data and questionable arms length transactions. Specifically, the appraiser, in his cost approach, estimated a land value without using any comparable land sales or any other data to explain how he arrived at the land value. Of the three comparable sales utilized by the appraiser in the market approach, comparable #1 was an estate sale and the wrong gross living area was applied, comparable #2 was listed as one cottage when in fact there are two small camps on the lot and incorrect measurements were applied for the lot size and the camps, comparable #3 was a family sale (grandfather to grandchild) and incorrect gross living area and lot size

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were

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applied. Therefore, the board finds the appraiser's conclusion of market value to be inconclusive at best.

If the taxes have been paid, the amount paid on the value in excess of \$155,100 for 1990 and 1991 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, the Town shall also refund any overpayment for 1992 and 1993. 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.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) 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 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Blake H. Schubert, Esq., representative for the Taxpayer; and Chairman, Selectmen of Enfield.

Dated: June 7, 1994

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Valerie B. Lanigan, Clerk