

**William F. and Elizabeth A. Caterino**

**v.**

**Town of Weare**

**Docket No.: 10868-90**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$106,600 (land \$65,500; buildings \$41,100) on a .44-acre lot with a camp (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. After reviewing all Lake Horace appeals, the board decided to hold a hearing to gather further information. The board has reviewed the written submittals and the evidence from the hearing and issues the following decision. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers failed to carry this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Property is located on the lake's river portion and the camps across the street are noisy;
- (2) the land is steep and rocky, the water's edge is steep preventing boat launching, the swimming is dangerous due to boat traffic, and there is no sandy beach;
- (3) the Town's methodology was flawed because the lakefront land assessments were based on multiplying nonlakefront sales with multipliers that were very subjective;
- (4) the abutting lot is a larger lot with more frontage directly on the lake with a view of the lake's entire length, flat and level land, a sandy beach, easy water access, a deck with glass windows and storage space underneath, a guest cottage and fireplace and was sold and assessed for \$135,000 in the Spring of 1990 (Town sale 9), yet the Property, which only has river frontage, an open deck and screened porch, no fireplaces or guest cottages, no beach, and dangerous swimming was assessed at \$106,000; and
- (5) the assessed value should be \$70,000 based on adjustments to the abutter's sale price.

At the start of the hearing, the Town explained the assessment methodology that was applied to all Town properties and the detail of that methodology as applied to Lake Horace properties. The Town submitted a sales book with photographs and sales and assessment information. The Town argued the assessments were proper because:

- (1) the same methodology was used throughout the Town;

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(2) the Property is grandfathered and the land assessment was based on prior sales with adjustments for size, utility, location, density, topography and views and, therefore, will not have the same assessment as the neighboring lot;

(3) smaller lots have greater per-acre values;

(4) the Taxpayers' enhancement factor was 275% to address the Property's waterfront, and the neighboring lot had a 300% enhancement factor because the waterfront was superior;

(5) the neighbor's building is 295 square-feet larger than the Property's building, and the larger size, as well as the fireplaces, glass windows on the porch, extra storage space and cottage house were all considered in the neighbor's building assessment;

(6) the assessment is supported by Town sales 8, 9, 12 and 13; and

(7) the Taxpayers' adjustments, based on Town sale 9, do not warrant a \$70,000 assessment and the issues raised were reflected in the assessment.

The board's inspector reviewed the assessment-record card and the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the assessment was proper. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

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### Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to show they were disproportionately assessed. The only market data provided by the Taxpayers was the sale of an abutting property for \$135,000. The Taxpayers then, without demonstrating the basis, asserted the Property should be assessed at \$70,000. The board did not accept the Taxpayers' value opinion because it was unsupported by comparative analysis. Additionally, the Town demonstrated it used a consistent methodology throughout the Town based on numerous sales. The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment 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. In conclusion, the sales that were presented to the board require the conclusion that the Property was worth more than the Taxpayers' \$70,000 figure, and there being no other market evidence, the board concludes the Taxpayers failed to carry their burden.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The motion must state with specificity the reasons supporting the request, but

generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

Concurred, Unavailable for Signature  
Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to William P. and Elizabeth A. Caterino, Taxpayers; and Chairman, Selectmen of Weare.

Dated: September 14, 1993

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Valerie B. Lanigan, Clerk

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