

**Melvin F. and Cynthia D. Murray**

**v.**

**Town of Holderness**

**Docket Nos.: 8123-90 and 10969-91PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessments of \$207,300 (land, \$178,100; buildings, \$29,200) on Map 5A.50 (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers met this burden of proof and established disproportionality.

The Taxpayers argued the assessments were excessive because:

- 1) the Property is located on a 1/4 mile, man made, shallow channel connecting Little Squam and Big Squam lakes, and there are no views of either lake from the Property;
- 2) the frontage is not 128 feet as listed on the Town tax map, rather the deeded frontage is 114 feet 3 inches;

3) the Property is a non-conforming lot under the Holderness zoning ordinance;

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4) there is a dangerous and inadequate line of sight at the lot's driveway due to a knoll on Route 113, which obscures the view of oncoming vehicles;

5) there is no artesian or dug well, drinking water is carried in;

6) commercial dock storage occurs opposite the subject lot and from Labor Day to Memorial Day occupies approximately half the channel;

7) swimming is very limited due to there being no beach area, boat fuel pollution, heavy boat traffic, duck feces and rotting leaves which settle on the bottom of the channel;

8) the Town's comparable sale of the adjoining property (Skinner) for \$175,000 was sold with the seller providing an interest free loan and also receiving life tenancy in the Property;

9) 90% of all boats on Squam Lake use the channel for one purpose or another;

10) a private boat launching facility, and parking lot open to the public, is approximately 100 yards from the Property creating more congestion on the channel in front of the subject Property;

11) there is continuous heavy boat traffic from 9:00 a.m. to 6:00 p.m.;

12) gas and oil accumulate on channel water surface creating health hazard to swimming and no fish for sportsman, and heavy wake from boats exceeding posted speed limit erodes banking along front of lot;

13) an appraisal by Capital Appraisal Associates submitted by the Taxpayers estimated the fair market value as of April 1, 1990 to be \$168,000; and

14) the Taxpayers testified the market value as of April 1, 1990 should be

\$150,000.

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The Town argued the assessments were proper because:

- 1) the lot was assessed on its size, not the amount of frontage; thus, a correction of the frontage to 114 feet would not change the lot's value since the lot's size did not change;
- 2) the Skinner sale and the Hill sale indicated the assessments were proper;  
and
- 3) the lot is not so non-conforming to prohibit the Taxpayers from renovating to a year round property as is presently occurring to the Property.

#### Board Rulings

Based on the evidence the board finds the Town's comparables (Skinner and Read) were not comparable. The Skinner sale was not an arms-length transaction as the grantor, Mr. Veasey, reserved a life estate for himself and agreed to interest free monthly payments from Mr. Skinner. Further, the Skinner property is year-round with a two car garage (unlike the subject).

The Read property was described as "one of the top ten properties on Big Squam Lake" and has approximately 200' on Big Squam and 400 - 500' on the channel. Although the Appraisal Company who performed the revaluation indicated that the number of feet of water frontage was not part of their formula (they depended upon size), the fact remains that the buying public places great weight on the amount of frontage on the water.

Photographs submitted by the Taxpayers support significant differences

between the subject Property and the Town's year round Skinner, Read comparable properties. The board finds the Town's condition factor of 1.2 to be excessive and not supported by the facts. The board finds a condition factor of 1.00 to be more realistic.

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The board rules the correct assessment for the Murray Property in 1990 and 1991 is \$178,300 (land, \$148,400; building, \$22,100; other improvements, \$7,800).

If the taxes have been paid, the amount paid on the value in excess of \$178,300 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), 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, or changes are made to the Property, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Melvin F. and Cynthia D. Murray, Taxpayers; and Chairman, Selectmen of Holderness.

Dated: January 6, 1994

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Valerie B. Lanigan, Clerk