

**Brenda R. Melendy**

**v.**

**Town of Salisbury**

**Docket No.: 8465-90**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$227,950 (land \$164,650; buildings \$63,300) on a 5-acre lot with 5 cottages on Tucker Pond (the Property). For the reasons stated below, the appeal for abatement is denied.

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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the taxes jumped up drastically (more than doubled);
- (2) she cannot charge the same rent that cottages are charged on big lakes because this is a small pond not a big lake;
- (3) the rent was about \$265/month for four cottages, renting July 4th to Labor Day and she stays in another cottage; and

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(4) she only uses the Property seasonably, receives no services and has no children in school.

The Taxpayer had a 1981 appraisal that estimated a \$71,000 value. The board did not accept the report because it was too remote in time to the 1990 assessment date.

The Town argued the assessment was proper because:

- (1) the assessment was arrived at during the town-wide revaluation based on a market data collected during the revaluation;
- (2) the only waterfront sale was the Thompson sale, which supported the assessment;
- (3) the Pouliot waterfront sale also supported the assessment methodology and resulting assessments on waterfront properties; and
- (4) the Taxpayer failed to present any market data to show a lower assessment.

The Town also asked the board to order the Taxpayer to pay the Town's appeal costs because the appeal was frivolous, being based on increased taxes and not market data.

#### Board's Rulings

Based on the evidence, we find the Taxpayer failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

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

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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.

Concerning the dramatic increase in the assessment, the board notes that increases from past assessments are not evidence that a taxpayer's property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985).

The Taxpayer also complained about the high amount of taxes she 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 paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 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).

We deny the Town's request for costs, finding that while the Taxpayer did not have sufficient evidence, her appeal was not abuse of the appeals process.

A motion for rehearing, reconsideration or clarification (collectively

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"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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Brenda K. Melendy, Taxpayer; and Chairman, Selectmen of Salisbury.

Dated: May 6, 1994

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Valerie B. Lanigan, Clerk