

Jane W. Whitehead

v.

Town of Holderness

Docket Nos.: 8533-90 and 11115-91 PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessment of \$25,000 (land only) (the Property). The Taxpayer also owns, but withdrew the appeal on, a property identified as Map 12 lot 8 assessed for \$432,800. For the reasons stated below, the appeal for abatement is granted.

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 carried the burden of proof and showed disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the property is only a 10 x 10 foot access strip to Squam lake which was acquired in the 1950's as an access to their island property;
- (2) the parcel is no longer used as an access for the island and could not be used to construct a dock from due to its size;
- (3) the lot size has been reduced due to a widening of the road;

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- (4) the parcel is worth only about \$5,000 given its size and utility; and
- (5) adjoining properties are assessed for less with greater size and utility.

The Town, at the hearing, recommended the assessment be reduced to \$18,800 to reflect its size and utility and argued the assessment was otherwise proper because:

- (1) the lot has water access value for either island owners or owners not on the lake;
- (2) the owner could use the lot for a mooring site even if a dock could not be permitted; and
- (3) some rights-of-ways have sold for approximately \$9,000.

Board's Rulings

Based on the evidence, the board finds the correct 1990-91 assessments to be \$5,000 owing to the extremely limited size and utility of the less than 10' x 10' area. The functional problems presented result in a nominal value for whatever access to the lake is practical.

If the taxes have been paid, the amount paid on the value in excess of \$5,000 shall be refunded with interest at six percent per annum for 1990 and 1991 from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

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Paul B. Franklin, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Gretchen W. Maynard for Jane W. Whitehead; and the Chairman, Selectmen of Holderness.

Date: September 28, 1993

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Valerie B. Lanigan, Clerk