

**Beverly A. Wood**

**v.**

**Town of Holderness**

**Docket No.: 8598-90**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessments of: Map 3B, Lot 21 - \$309,300 (land, \$277,200; buildings, \$32,100) and Map 3B, Lot 20 - \$494,000 (land, \$416,300; buildings, \$77,700) on Central Road (the Properties). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessments were 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). We find the Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessments were excessive because the subject land (.81 acre) with a 110 foot shore front (Lot 20) was assessed for \$416,300 with \$77,700 for improvements (total \$494,000). An abutting similar lot owned

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by Irion (Lot 19) (.75 acre with a 111 foot shore front) was assessed for \$350,000 with improvements of \$48,000 (total \$398,700).

Lot 21 owned by the Taxpayer was assessed for \$309,300 total (.38 acre with 50 feet of shore front) land, \$277,200; buildings, \$32,100. Lot 21 was compared with Lot 22 owned by Nikander (.45 acre with 50 feet of shore front sold August, 1990 for \$170,000).

Another neighborhood sale Cardosi (.50 acre with 204 feet of shore front, which sold in June of 1991 for \$485,000 was a year round home assessed for \$563,500. The sales were 'arms length transactions' in the opinion of its broker/appraiser who handled the transactions.

The Town argued the assessments were proper because:

- (1) "the Wood property is significantly larger than the Irion property, Lot 19." (.12 acre);
- (2) close distances between buildings, typical conditions on Squam Lake;
- (3) common access significantly devalues Nikander property while it has less impact to Wood property as it passes "far to the rear of her lot"; and
- (4) the Town's appraiser, Mr. Glen Smith, also challenges the Cardosi sale as not being "an arms length transaction".

#### Lot 20

The board reviewed the Taxpayer's appraisal and concluded that while it contained helpful information, the gross percentage adjustments on the

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comparable grid were excessive. The board also concluded the Town failed to support the assessment, in particular the additional fifteen percent on the condition factor (land). The board, therefore, calculated the land without

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the 15% adjustment, resulting in \$362,000 (land). The board also reviewed the Taxpayer's comparable sales and performed a front-foot analysis without the excessive adjustments made by the Taxpayer, resulting in a land assessment of \$354,750 (\$3,225 x 110 feet). The board then reviewed the evidence concerning the building, accepting the Taxpayer's evidence that the total cost of the house and other improvements was \$122,500 and the building was 75% complete or \$91,875.

Thus, the board orders an assessment of \$451,875 (land, \$360,000; building, \$91,875).

#### Lot 21

The Town provided no evidence to support the assessment on Lot 21, especially the 10% condition factor (land). As with Lot 20, the board concluded the Taxpayer's appraiser over adjusted the comparables in the appraisal. The August, 1990 Russell/Nikander sale, which the Taxpayer's appraiser asserted was arms-length, certainly raised a question about the excessiveness of Lot 21's assessment. That sale, however, was not a market sale because it was never exposed to the market. Nonetheless, it provided credible evidence that Lot 21's \$309,000 assessment was excessive.

Interestingly, the Town gave the Nikander lot a -25% condition factor for "shape." Both Lot 21 and Nikander are narrow rectangular-shape lots, having similar size, access and frontage. If the -25% were applied to Lot 21,

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the assessment would be \$221,100 (land, \$189,000; building, \$32,100). Simply, removing the +10% condition factor results in a \$284,100 assessment (land, \$252,000; building, \$32,100), which is excessive based on the Taxpayer's

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analysis. The board also performed a front-foot analysis, arriving at \$232,100 (land, \$200,000; building, \$32,100).

The Taxpayer carried her burden, and the Town failed to support the \$309,000 assessment. Additionally, the board's review showed overassessment.

Therefore, the assessment of Lot 21 shall be \$221,000 (land, \$189,000; building, \$32,100). This assessment is: (a) supported by the evidence; and (b) consistent with the Town's adjustments used on Nikander.

If the taxes have been paid, the amount paid on the value in excess of \$221,000 for Lot 21 and \$451,875 for Lot 20 (total \$672,875) shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

The board must comment on Apple Appraisal's failure to adequately present the Town's position. This appeal involved assessments totalling \$803,000, a significant amount of tax base. The Taxpayer submitted an appraisal and a significant rebuttal brief. Apple only submitted two pages of argument that dealt only with Lot 20.

The Town failed to submit any sales to support the assessments. Since the Town was recently revalued, the Town should have submitted sales for the board's consideration. RSA 76:1 requires that assessments be in line with market value. Therefore, providing sales is essential for the board to compare the assessments with their fair market values and the general level of

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assessment in the municipality. See Appeal of NET Realty Holding Trust, 128  
N.H. 795, 796 (1986).

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Apple's nonperformance is troubling because while the board reviews individual properties, it does so in the context of the entire Town. When this context is not provided, the board cannot fulfill its full duty.

The board must also comment on Mr. Armstrong's appraisal report. In the future, he should type the comparison grid. This handwritten grid is very hard to read. Additionally, the board's rules required the property record cards be submitted with comparables. Mr. Armstrong failed to do this. Finally, photographs of comparables should be sent. The photocopies of realtor listings are not helpful because one cannot see the photographed property.

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

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Beverly A. Wood, taxpayer; and Chairman, Selectmen of Holderness.

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Dated: July 13, 1992

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Melanie J. Ekstrom, Deputy Clerk

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