

**Edward L. and Joyce A. Rogers**

**v.**

**Town of Holderness**

**Docket No.: 8973-90 and 11404-91PT**

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessments of \$320,300 (land \$275,400; buildings \$44,900) on a .26-acre lot with a camp (the Property). For the reasons stated below, the appeal for abatements is denied.

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 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to met their burden of proof.

The Taxpayers argued the assessments were excessive because:

- (1) a 1.35 land condition factor is not justified and should be reduced;
- (2) six years ago, the Department of Revenue Administration (DRA) applied a 10% topographical discount to the Property;
- (3) the dock is overassessed;
- (4) the tin shed should not be taxed; and

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(5) the fair market value of the Property is \$199,508 which was arrived at by determining a square yard value of the Property utilizing the Town's comparable sales but excluding the Cutright sale.

The Town argued the assessments were proper because:

- (1) the Property is a .26 acre improved site with a grandfathered use, has adequate water and sewer and 142 feet of water frontage and given these factors, a 1.35 condition factor is fair;
- (2) as part of the revaluation, 30 vacant and 61 improved sales were analyzed from a period beginning April 1, 1988 through March 31, 1990;
- (3) comparable sales analyzed support the assessment;
- (4) assessing on a per square yard basis does not properly characterize the real estate market in 1990 and is not recognized as a proper appraisal practice;
- (5) all docks were appraised in the same fashion on a per square foot basis adjusted for condition;
- (6) the valuation of the shed is consistent with other similar sheds and is fair; and
- (7) the assessment adequately characterizes the real estate market and the adjustments are fair and proportional.

**Board's Rulings**

The board notes the Taxpayers' contention that "no value or a reduced

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assessed value should apply to the dock on lot 38 and include no value because all permanent docks are on State of New Hampshire land (below the high water mark) and therefore are technically state property."

The board rejects this thesis in the subject appeal and other previous appeals in which it was raised on the grounds that the privilege to place a dock in public waters flows from a taxpayer's fee interest in the abutting shore front and is therefore taxable to the property owner.

Further, the fact that a neighboring lot 36 is allegedly not taxed on a longer dock than the subject is not grounds for an abatement.

The board finds the Taxpayers' Property was not overassessed. However, there was evidence indicating certain surrounding properties may have been underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., Id.

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We find the Taxpayers failed to prove the Property's assessments were disproportional. We also find the Town supported the Property's assessments.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Edward L. and Joyce A. Rogers, Taxpayers; and Chairman, Selectmen of Holderness.

Dated: August 24, 1993

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Valerie B. Lanigan, Clerk