

**John and Janet Frongillo**

**v.**

**Town of Alexandria**

**Docket No.: 9567-90 and 10589-90**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$139,700 on a vacant, 1.12-acre lot with a 1/6 interest to Bourbon Beach on Newfound Lake (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. However, the board held a hearing on April 23, 1993 on the sixteen 1990 Alexandria appeals to receive evidence on the basis of the land valuation and the general assessment methodology employed by the Town. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was 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 carried this burden.

The Taxpayers argued the assessment was excessive because:

- 1) the Property was not assessed at the April 1, 1990 fair market value;
- 2) the Property was purchased in 1988 (board note: \$137,500) when the market was good;
- 3) the taxes have increased over \$2,100 in one year's time;
- 4) land values were based on the year 1990 without comparables to substantiate those prices;
- 5) only one-third of the Property is buildable and the remainder is steep;
- 6) the Property has a shared driveway; and
- 7) the beach rights are shared with five other families.

The Town failed to submit any arguments to support the assessment and was finally defaulted. The assessment-record card reflects an adjustment in the land assessment, resulting in a \$124,200 assessment for tax year 1992.

At a hearing held by the board on April 23, 1993, the Town explained its general methodology used in assessing property on Newfound Lake.

The board's inspector reviewed the assessment-record card, reviewed the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the 1992 adjusted assessment on Lot 29 (\$124,200) should also apply to the tax year 1990. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation. In this case,

the board gave the inspector's report no weight.

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### **Board's Rulings**

Based on the evidence, the board finds the correct assessment should be \$113,725. Consistent with the Town's adjustments applied in the Rich appeal, the board has applied an additional 10% site adjustment (to .75) for the Property's undeveloped factor. Further, the board has reviewed the properties appealed which have an interest in the Bourbon Beach and finds that in the Churchill and Rich properties, the Town adjusted the base value of the rear acreage from \$20,000 to \$2,000 and, upon review, the board finds that the \$2,000 base value should be applied to the subject.

The Taxpayers complained about the high amount of taxes they must pay. The amount of property taxes paid by the Taxpayers were 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 Taxpayers 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).

Increases from past assessments are not evidence that a taxpayer's

property is disproportionally 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).

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If the taxes have been paid, the amount paid on the value in excess of \$113,725 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 the Town's appraisers' less than professional reassessment and maintenance of the assessment record cards. The board finds:

- 1) The appraisers' review and analysis of the sales relating to the Alexandria/Newfound Lake market was inadequate. It is clear from the evidence presented at the April 23, 1993 hearing that the appraisers never fully researched the limited number of sales that had occurred. Further, the sales survey submitted at the hearing does not include any verification of the sales used and there are no notations as to the basis of the adjustments made in analyzing the sales and deriving of base value used for waterfront property.
- 2) The Board found, in reviewing the files, that the appraisers' methodology was not always consistently applied either during the reassessment or in subsequent tax years (e.g., rear land base values were subsequently reduced on some but not all properties from \$20,000 an acre to \$2,000 an acre).
- 3) During the revaluation process, the appraisers decided to value properties fronting on Newfound Lake and divided by West Shore Rd. in one assessment

rather than two. Existing cards for the waterfront portion remained in the Town's file with an assessment on them. Consequently, anyone reviewing the file would inherently be confused by the existence of this "dummy" assessment record card.

4) The notations and calculations of the land valuation on the assessment record cards are in many cases illegible, non-existent or so brief that it is

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difficult to understand the appraisers' reasoning.

Because of these shortcomings, the Board considered initiating the procedure under RSA 71:B-16 of ordering a reassessment of the properties in the Newfound Lake area. However, the Board concluded that, because of the limited area in concern, that equitable assessments could be more efficiently corrected through the abatement process.

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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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to John and Janet Frongillo, Taxpayers; and Chairman, Selectmen of Alexandria.

Dated: July 9, 1993

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Melanie J. Ekstrom, Deputy Clerk

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