

Peter S. and Susan M. Francesco

v.

Town of Holderness

Docket No.: 9633-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessments of:

Map/Lot	Assessment	Description
Map 10, Lot 18	\$973,500 (land, \$803,000; buildings, \$107,500)	4.75 acre lot with two camps and house
Map 3, Lot 25A	\$94,300 (land only)	5.0 acres
Map 5A, Lot 44	\$26,300 (land only)	.07 acre

(the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. However, due to the complexity of the case, and in order to arrive at an appropriate decision, the board held a hearing on July 22, 1993. The board has reviewed the written submittals and the hearing testimony and issues the following decision. For the reasons stated below, the appeal for abatement is granted with respect to Lots 18 and 25A and denied with respect to Lot 44.

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

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carried this burden and proved disproportionality with respect to Lots 18 and 25A.

The Taxpayers argued the assessments were excessive because:

Map 10, Lot 18

- (1) the lot cannot be subdivided as it only has 330 feet of frontage on Squam Lake and zoning requires 200 feet minimum;
- (2) the land slopes downward to the lake and then drops to the lake at the water's edge with no sandy beach;
- (3) two property owners have rights-of-way over the lot;
- (4) Bennett Brook frontages on comparables were not captured by the Town as the comparables are capable of being subdivided;
- (5) the fair market value of the lot, including buildings, as of April, 1990 is \$712,600.

Map 3 Lot 25A

- (1) the road frontage on Rte. 3 is limited access and too steep to drive a car onto;
- (2) access is through a right-of-way 800-1,000 feet off Shepard Hill Road;
- (3) comparables indicate the lot is overassessed;

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- (4) there is a well on the lot deeded across Rte. 3 to Cottage Colony with a 250 foot radius around the well that you could not build upon;
- (5) the prime usage of the lot is a house site at the top of the hill to enjoy the view; and
- (6) the fair market value of the lot as of April, 1990 is \$65,000.

Map 5A Lot 44

- (1) the lot is good only for parking;
 - (2) in the late 1980's, the zoning board denied an application for a dock;
- and
- (3) the fair market value of the lot as of April, 1990 is \$15,000 to \$20,000.

The Town argued the assessment was proper because:

Map 10 Lot 18

- (1) the lot has three buildings on it, one being year round;
- (2) a 5% condition factor was applied to reflect the rights-of-way over the lot, a 20% condition factor was applied for the lots topography, and a 70% neighborhood adjustment was applied for the house which was removed from the waterfront;
- (3) the assessment is within the range of comparable properties;
- (4) waterfront properties have higher assessments based on location and utility; and
- (5) corrections were made to the Taxpayers' comparables where underassessment

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was found.

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Map 3 Lot 25A

- (1) the site is cleared, there is a view, and access was developed to the lot;
- (2) the Town assumed further subdividability but perhaps the lot is not subdividable; and
- (3) if the lot could not be subdivided, a condition factor of .25 instead of .75 on the frontage should be applied.

Map 5A Lot 44

- (1) the lot gives access to the water and a boat could be moored there; and
- (2) adjustments were made because the lot is on Squam Channel instead of the lake and for its shape and limited use.

Board's Rulings

Map 10 Lot 18

The board notes that this appeal was filed by Peter S. and Susan M. Francesco who, according to the property-assessment cards, own and were assessed for a 2/3 undivided interest in the land and assessed for all of the buildings on the lot, for a total of \$707,700. Louis P. and Dorothy Francesco, were assessed \$265,800 of the total assessment of the lot of \$973,500 for their 1/3 undivided interest in the lot. In making a decision on value, the board looks at the Property's value as a whole because this is how the market views value. However, the existing assessment process allocates

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the total value between the parties of interest. The board has not allocated the value between each party's interest, and the Town shall make this allocation in accordance with its assessing practices.

Based on the evidence, the board finds the correct assessment for the entire Lot 18 (all interests) should be \$853,050 (Land, \$682,550; Buildings, \$170,500). This assessment is ordered because the board finds that adequate adjustments were not made to reflect the fact that although there are three buildings on the site, the lot cannot be subdivided. Further, the existence of the rights-of-way over the lot may have more of an affect on the lot than addressed by the Town. The board reviewed all of the evidence, and the comparable sales submitted by both parties, and finds that an additional 15% adjustment to the land is warranted.

Map 3 Lot 25A

Based on the evidence, the board finds the correct assessment should be \$79,400. Based on the topography, limited access on Rte. 3 and well on the lot deeded to another property, the board finds that this lot would not be subdividable and adjusts the front foot condition factor to .25. The board finds no other adjustments are warranted.

Map 5A Lot 44

Based on the evidence, the board finds the Taxpayers failed to prove this lot's assessment was disproportional. The lot provides parking and

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access to the lake. The Taxpayers did not present any evidence of the lot's fair market value. To carry this burden, the Taxpayers should have made a showing of the lot's fair market value. This value would then have been compared to the assessment and the level of assessments generally in the Town.

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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.

If the taxes have been paid, the amounts paid on the values in excess of the above listed assessments are to be refunded with interest at six percent per annum from date of payment to date of refund.

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

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Peter S. and Susan M. Francesco; Taxpayers and Chairman, Board of Selectmen of Holderness.

Dated: _____

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Melanie J. Ekstrom, Deputy Clerk