

EAF Realty Trust

v.

Town of Northwood

Docket No.: 9843-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$218,800 (land \$203,000; buildings \$15,800) on Ram's Island, a 3.0+/- acre island with a house on Northwood Lake (the Property). 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 this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property is an island property and market value conditions vary between island and mainland properties;
- (2) the Property has limited access, limited services and incremental costs associated to island properties, and cannot be subdivided;

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(3) an appraiser testified an approximate 40% difference exists between island properties and mainland properties and the fair market value as of April 1, 1990 was \$115,000; and

(4) with the amount of boat traffic on the lake, there is less privacy on the island than on the mainland.

The Town recommended revising the assessment to \$197,000 by reducing the lot size to 100 x 100 and argued the revised assessment was proper because:

(1) a 50% adjustment for access was applied because the Property is on an island and a 75% topography adjustment was applied;

(2) sales in the Town support the front foot value established;

(3) the Taxpayer's appraiser used a comparable on Harvey Lake which is not comparable to Northwood Lake and a 3.5 acre parcel would command a higher value than the size of the comparables; and

(4) the Taxpayer paid \$15,000 in February, 1988 for an easement to access the island.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$177,300. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted.

See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). However, the existing assessment process allocates the total value between land value and

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building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.) This assessment is ordered because the board finds, based on its judgment and experience, an additional 10% depreciation from the Town's recommended assessment is warranted for the Property's access and topography. The revised assessment, when equalized by the Town's 1990 ratio of 107% indicates a market value of \$165,700. This indicated value is reasonable based on photographic evidence and the general evidence submitted by both parties. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Guimm, ___ N.H. ___ (Dec. 17, 1993) (administrative board may use expertise and experience to evaluate evidence). The board finds no further adjustment is warranted because the Taxpayer's appraiser:

- (1) failed to adjust the comparables for their locations on other lakes or submit evidence as to their comparability;
- (2) looked at sales of island waterfront properties on Lake Winnepesaukee only and failed to analyze any sales of similar sized water bodies; and
- (3) failed to make any adjustments for complete island ownership versus ownership of a lot on an island.

If the taxes have been paid, the amount paid on the value in excess of

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\$177,300 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1991, 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph P. Fiorentino, Trustee of EAF Realty Trust, Taxpayer; and Mary E. Pinkham-Langer, Agent for the Town of Northwood.

Dated: March 10, 1994

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Valerie B. Lanigan, Clerk