

Edith G. McGarry

v.

Town of Enfield

Docket No.: 9893-90

**DECISION**

The "Taxpayer" appeals pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$133,500 consisting of a seasonal home on Mascoma Lake (the Property). 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 assessment was 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).

The Taxpayer argued the assessment was excessive because:

- 1) Mascoma Lake is not a superior lake and the Property's location is inferior;
- 2) a public right-of-way runs along a boundary, resulting in loss of privacy;
- 3) the water is not accessible because of the steep slope;
- 4) the cottage is only a seasonal camp-grade; and

5) the Town's comparables were superior.

The Town argued the assessment was proper because it was consistent with the assessment on neighboring properties. (A spreadsheet for comparison was submitted.) The Town did not submit any sales upon which the assessments were based, and the Town failed to address the Taxpayer's specific concerns, e.g., the right-of-way.

Nonetheless, the Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer must make a showing of the Property's fair market value. This value would have then been compared to the Property's assessment and the level of assessments generally in the Town. 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.

Based on the evidence, we find the correct assessment should be \$126,825. This assessment is ordered because the board agrees with the Taxpayer that an adjustment should be made to the entire assessment of 5% for proximity to a public right-of-way to the water which results in loss of privacy.

If the taxes have been paid, the amount paid on the value in excess of \$126,825 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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

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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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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

I hereby certify that a copy of the foregoing decision has been  
mailed this date, postage prepaid, to Edith G. McGarry, Taxpayer; and  
Chairman, Selectmen of Enfield.

Dated: June 17, 1992

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Melanie J. Ekstrom, Deputy Clerk