

Joseph McGrath

v.

Town of Alexandria

Docket No.: **9915-90**

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$259,100 (land, \$182,500; buildings, \$76,600) on a .7 acre lot, consisting of a house on Newfound 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 201.04(e); 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 was assessed as .75 acres, and is only .70 acres;
- (2) 2/3 of the Property is wetlands, leaving only 1/4 acre buildable land;
- (3) the Town's starting point of \$200,000 for a 1/4 acre site is not appropriate for the Property as only 1/4 of the lot is usable, and the size of the usable portion is only enough to contain a modular home;

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(4) a neighboring lot has twice the usable land but is valued at \$32,000 less;
and

(5) the waterfront is rocky, steep, and has no view.

The Town argued the assessment was proper because:

(1) the close proximity of the dwelling to the lake offset the rocky frontage and wetness of the undeveloped portion of the lot; and

(2) the town corrected the size of the lot and adjusted the land value for its utility in 1992 and recommended the 1992 value apply also to 1990.

The board's inspector, reviewed the assessment-record card, and filed a report with the board (copy enclosed). This report concluded the proper assessment should be \$226,900 (land, \$154,200; buildings, \$72,700).

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 places no weight on the inspector's recommendation.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$222,950 (land \$150,250 and building \$72,700). This assessment is ordered because:

1) the board finds the .25 acre site should receive a -25% adjustment for its

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rocky frontage, access to the water and limited expansion of development; the board does not find the close proximity of the dwelling to the water entirely offsets these site limitations; this adjustment is consistent with the summary of the land adjustments submitted by town and used a guide by the assessors;

2) this -25% adjustment is inclusive of the factors of the Town's 1990 multiple factor adjustment;

3) the rear land base value should be reduced from \$20,000 to \$2,000 to be consistent with adjustments made by the Town to the rear land of other properties subsequent to the reassessment;

4) these adjustments result in a proper land valuation of \$150,200;

5) the board finds the building value to be reasonable; and

6) these adjustments result in the Taxpayer's assessment being proportional to comparables submitted by the Taxpayer.

No further abatement is warranted because;

1) these adjustments reflect the lot's limited development area and the wetness of the balance of the lot; and

2) The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have 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

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(1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985);
Appeal of Town of Sunapee, 126 N.H. at 217-18.

The Taxpayer raised the additional issue that the RSA 76:17-a 6 percent abatement interest has been only calculated based solely on the final December tax bill and not the partial payment bill issued pursuant to 76:15-a.

The board rules that any interest due on abatements to the Taxpayer shall be calculated from the date any payment, partial or total, is made for the tax year in question. RSA 76:17a clearly states that interest shall be calculated at the "rate of 6 percent per annum from the date the taxes were paid to the date of refund." (emphasis added)

The Town shall within two months of the clerk's date on this decision, make the correct award of interest for any previous abatement, for the 1990 tax year and for the abatement ordered in this decision. If the Town fails to make the proper award of interest, the Taxpayer may file a motion for enforcement of the board's order under RSA 76:17-c (1992 supp).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

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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 McGrath, Taxpayer; and Chairman, Selectmen of Alexandria.

Dated: June 21, 1993

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Valerie B. Lanigan, Clerk