**Walter and Mary Ann Skwierz**

**v.**

**Town of Salisbury**

**Docket No.: 9968-90**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of $99,300 (land $79,750; buildings $19,550) on a 2-acre lot with a house (the Property). For the reasons stated below, the appeal for abatement is denied.

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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry their burden.

The Taxpayers argued the assessment was excessive because:

(1) the land was overassessed and should have been assessed at $62,500;

(2) the total assessment should be $82,050;

(3) the correct land size is 1.5 acres as evidenced by the deed and a sketch of the deed description;

(4) the Town did not consider that an access road crosses a corner of the lot, making that section unbuildable and subject to the access road;

(5) the neighbor has a right to the shared driveway on the Property;

(6) there are restrictions concerning the location of a well both by deed and by physical limitations, resulting in the water being from the lake (The Taxpayers stated drilling a well would be too expensive to justify drilling.);

(7) given the Property's location in a cove with a nearby drainage out of the pond, the water quality is poor; and

(8) the Pouliot property is superior to the Property.

The Town argued the assessment was proper because:

(1) the same methodology was used throughout the Town with the assessment arrived at based on market studies;

(2) the Taxpayers' sketch relied upon assumptions because the deed is not specific and the Town concluded the lot was 2 acres;

(3) the assessment was adjusted for shape;

(4) it was based on looking at the value as a whole, considering all factors for both land and building;

(5) the Taxpayers did not present any evidence of the Property's market value as a whole but only argued about the land assessment;

(6) the land assessment was consistent with all other assessments on the lake;

(7) none of the other issues raised by the Taxpayers warranted adjustments; and

(8) the Taxpayers' asserted proper assessment would be too low and inconsistent with other assessments on the pond.

The Town also asked the board to order the Taxpayers to pay the Town's appeal costs because the appeal was frivolous, being based on increased taxes and

not market data.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not show overassessment.

The board finds the Taxpayers did not carry their burden to show the lot was 1.5 acres, not the 2 acres used by the Town. The Taxpayers presented two documents on this point: 1) their deed; and 2) their sketch of the lot. The deed, however, does not recite specific enough courses to accurately sketch the lot. The sketch was based on the deed and Taxpayers assumptions. The Taxpayers did not review title records of surrounding properties, which presumably the tax mappers did review. Based on the tax maps and the lack of sufficient contradictory evidence, the board concludes the lot is 2.0 acres.

The Taxpayers' evidence focused mainly on the land assessment. The board, however, is required to review the Property's value as a whole. The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers 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 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

None of the other issues raised by the Taxpayers were shown to have an

adverse effect on the Property's value. Furthermore, the board, based on its judgment, does not think those factors would have a significant, if any, adverse impact on the Property's value.

We find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

We deny the Town's request for costs, finding that while the Taxpayers did not have sufficient evidence, their appeal was not abuse of the appeals process.

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

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

Skwierz v. Town of Salisbury

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Walter and Mary Ann Skwierz, Taxpayers; and Chairman, Selectmen of Salisbury.

Dated: August 8, 1994

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0008 Valerie B. Lanigan, Clerk