

**John E. Hartman**

**v.**

**Town of Brookfield**

**Docket No.: 11190-91 PT**

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$137,050 on a vacant, 8.81-acre lot on Kingswood 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 denied.

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 failed to carry this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property is on a Class VI road and, therefore, cannot be developed;
- and
- (2) the neighboring home was constructed before the road was converted to

Class VI and is grandfathered.

The Town argued the assessment was proper because:

(1) the assessment was based on sales that occurred during the revaluation, and the land value was based on comparable, lakefront properties in neighboring towns because no sales occurred on Kingswood Lake;

(2) comparable, lakefront sales on Rust Pond in Wolfeboro sold in May, 1991 for \$120,000, and in May, 1992 for \$117,500 -- both lots were assessed for approximately \$117,000;

(3) the Property was purchased in 1987 for \$125,000, and the abutting lot was purchased in February, 1988 for \$125,000 and was listed for sale for \$159,000 during the revaluation;

(4) the Property was assessed as a buildable lot because it is grandfathered and on the lake, and the Taxpayer could possibly obtain a variance to construct a home; and

(5) the Property was assessed equitably with neighboring lots, and the Taxpayer provided no proof that the lot was unbuildable.

The board's inspector reviewed the assessment-record card and the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the assessment was proper. 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.

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Board's Rulings

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

The sole issue raised by the Taxpayer in his argument was that the lot was located on a Class VI highway and was thus precluded from being built on.

The Taxpayer did not submit any market evidence of lots that had sold in the area or any evidence of other lots that had been built on or been refused a building permit except for a reference to a "nearby lot" that had been built on, but prior to the road reverting to Class VI. Further, no conclusive evidence was submitted that a building permit could not be obtained through the local review provided in RSA 674:41 I (c). This review is intended to be applied on a road-by-road basis rather than on a town-wide basis as the Town's answer to the board's order of October 27, 1993 seems to indicate.

The Town submitted evidence of the subject Property having sold in 1987 for \$125,000 and an abutting property having sold also for \$125,000 in 1988. The Town further stated that both these lots have been listed with no mention of being on a Class VI road and no specific prohibition of building.

The Town submitted a copy of Brookfield's zoning ordinance as requested by the board in its October 27, 1993 order. Article 5, section C.1 of the ordinance states in part "frontage on a Class VI highway (right-of-way) does not meet the frontage requirements for a building lot." Therefore, it appears as if obtaining a building permit is not a right guaranteed by the ordinance.

However, Article 10 of the ordinance provides a process for obtaining a

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building permit by an application to the zoning board of adjustment for either a variance or a special exception to the terms of the zoning ordinance.

The question of whether the lot can be built upon is not one that can be answered with any certainty based on the evidence submitted to the board. However, the purchase prices of the Taxpayer's lot and the adjoining lot, what they were listed for, and a possibility of obtaining a building permit through an appeal process at the Town level support the Town's contention that the lots were not shown to be unbuildable and therefore no adjustment should be made for that reason. Without market evidence recognizing this potential impact or without the Taxpayer presenting clear evidence as to the difficulty or impossibility of obtaining a building permit, the Taxpayer did not fulfill his burden of proof in establishing that the assessment is disproportional.

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.

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George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

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I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John E. Hartman, Taxpayer; and Chairman, Selectmen of Brookfield.

Dated:

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Lynn M. Wheeler, Deputy Clerk