

Karl West, William Haigh and Wendell Derry

v.

Town of New Hampton

Docket No.: 12425-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$21,700 (land only) on a .115 acre lot (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 Taxpayer failed to carry their burden of proof.

The Taxpayers argued the assessment was excessive because:

- (1) the lot is owned jointly by three families for parking and dock storage for their individually owned and developed abutting waterfront lots;
- (2) the lot is not buildable due to the small size of the lot (45 feet x 90 feet inclusive of the right-of-way to the other lots); and
- (3) the abutting lots owned by the Taxpayers are camps and quite modest and thus the Property does not provide significant contributory value.

The Town argued the assessment was proper because:

(1) the lot has a contributory value of \$7,200 ($\$21,700 \div 3$) to each of the three abutting lots and augments the parking and storage capabilities of the improved lots;
and

(2) the Property has superior frontage for swimming compared to the abutting improved lots;

Board's Rulings

Based on the evidence, we find the subject Property is properly assessed for the 1991 tax year.

This board finds the subject undeveloped lot provides a significant contributory value to the three improved, individually owned, abutting lots.

A photo supplied by the Town shows a cleared area for cookouts, family reunions, overflow parking, a sandy beach for bathing and a pleasant green area when not in use, which creates a feeling of spaciousness.

The Town's representative referred to an appeal (Horton v. Town of New Hampton, 11021-91PT) heard earlier in the week which saw a smaller, less desirable non-developed lot owned by three families with island property which required access from the mainland. The ownership of the access property was held in three shares of undivided interest in land assessed at \$45,000. Similarly, the subject unimproved waterfront lot would be of interest to inland property owners who wish to acquire a campsite on the water with parking and a lake access for boating, fishing and swimming.

Conversely, ownership of the subject (.115 acre) lot by individuals who might be insensitive to the abutters' right to privacy and peace and quiet

could create a public nuisance serious enough to create an impediment to the use and enjoyment of the abutting improved lots.

The Town argued the strong possibility of underassessment at \$21,700.

The board rules that although non-buildable, the subject lot has several different potential uses conservatively assessed at \$21,700.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) 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 in 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. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Karl West, William Haigh and Wendell Derry, Taxpayers; and Chairman, Board of Selectmen of New Hampton.

Dated: July 26, 1995

Valerie B. Lanigan, Clerk

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