

Dale L. Eichorn

v.

Town of Durham

Docket No.: 13058-92PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$285,200 (land \$176,400; building \$108,800) on a 4.28-acre lot with a house (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.

The Taxpayer argued the assessment was excessive because:

- 1) the Town improperly computed the square-foot area of the home;
- 2) the Town's zoning and other regulations limited the improvement of the Property to a very small area, resulting in a jog in the house to meet setback requirements and the house not being sited to have the best view of the water;

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- 3) the proximity to Route 4 is a detriment to the Property;
- 4) other older properties have pre-existing conditions that the Property will never have, yet all were assessed the same; and
- 5) the frontage on Little Bay accesses only the mud flats and is not suitable for a dock or swimming.

The Town argued the assessment was proper because:

- 1) the assessment is not excessive relative to the Taxpayer's comparables after adjusting the comparables for differences;
- 2) since the 1989 reassessment, sales of waterfront property indicate these types of properties held their value better than other types in Town;
- 3) the home's square footage was corrected and the condition factor for the excess acreage was reduced, resulting in the adjusted \$285,200 assessment for 1992;
- 4) most waterfront lots are restricted to some degree by zoning and setback requirements;
- 5) many waterfront properties can only access the water during a few hours due to the tides, yet sales indicate the market will pay more for their lots;
- 6) during the 1993 update, the assessment was reduced 35% to address the proximity to Route 4 and the reduction was supported by sales of waterfront property with and without Route 4 proximity;
- 7) the house site received a 15% decrease to address the topography and access; and
- 8) the Taxpayer misinterpreted some provisions of the Shoreland Protection Zone Ordinance to be more restrictive than they actually are.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed. 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 (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 stated the lot was purchased in April, 1991 but did not tell the board what the purchase price was. Further, the house was built sometime in 1991 and the Taxpayer provided no evidence of the construction costs. The Taxpayer stated on Section II (Property History) of Taxpayer's Brief that this information was "N/A" (not applicable). The board disagrees with the Taxpayer. That information is very applicable to the fair market value of the Property. Having failed to provide the board with any evidence of the purchase price of the land, cost to construct the building, or comparable sales data from similar properties adjusted for differences in size, condition, topography, location, and other relevant factors, the board has no basis to grant an abatement on this Property.

The board finds that the Town addressed each of the Taxpayer's concerns raised in the brief and made appropriate adjustments to the assessment.

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A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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 reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Donald F. Whittum, Esq., Counsel for Dale L. Eichorn, Taxpayer; and Chairman, Selectmen of Durham.

Dated: March 10, 1995

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Melanie J. Ekstrom, Deputy Clerk

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