

**Sharon Pierce**

**v.**

**Town of Durham**

**Docket No.: 13963-93PT**

**DECISION**

The Taxpayer appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$276,200 (land \$147,800; buildings \$128,400) on a two-story home on a 12,500 square foot lot (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 lot is small and is only accessible by a right-of-way;
- 2) when compared to other waterfront lots in the Colony Cove subdivision, the assessment was excessive;

3) the quality grade on the house was high; and

4) the fair market value as of April 1, 1995 was \$220,000.

The Town argued the assessment was proper because:

- 1) the subject and the comparables are located in desirable neighborhoods and are waterfront lots;
- 2) the Property was adjusted -10% due to the right-of-way;
- 3) the land values differ because of differences in size, rights-of-way, topography and location; and
- 4) some of the Taxpayer's comparable homes do not have the labor intensive quality or design of the subject, others are of better quality; the subject falls in the middle quality range and was equitably graded.

**BOARD FINDINGS**

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 submitted a group of assessment-record cards of all waterfront property in Colony Cove and other waterfront properties in the Town to show discrepancies in value. The Taxpayer did not tell the board how these properties compared to the subject in terms of topography, frontage, view, access, building condition, or any other factors which affect value. Further,

the Taxpayer did not present any photographs, comparable sales or maps to show the location of the properties

to allow the board to draw any conclusions. It is the Taxpayer's job and burden to organize and present the case.

The Taxpayer argued the Property was disproportionately assessed based on its size when compared to larger properties. Differing square-foot assessment values are not necessarily probative evidence of inequitable or disproportionate assessment. The market generally indicates higher per-square-foot prices for smaller lots than for larger lots, and since the yardstick for determining equitable taxation is market value (see RSA 75:1), it is necessary for assessments on a per-square-foot basis to differ to reflect this market phenomenon.

The Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v Town of Bedford, 122 N.H. 187, 189-90 (1982). The board finds the Town supported its assessment of the Property.

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. This, 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. 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

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Ignatius MacLellan, Esq., 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 Sharon Pierce, Taxpayer; and Chairman, Board of Selectmen of Durham.

Dated: May 4, 1995

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Valerie B. Lanigan, Clerk

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