

Ivan and Geraldine Fogarty

v.

Town of Barrington

Docket No.: 14314-93PT

ORDER

The board requires additional information before it decides this appeal.

The "Taxpayers" own two other properties in the "Town" (Map/Lot 11-13-7 and 14-10). The board is required to consider all properties owned by a taxpayer in the municipality even if all properties are not appealed. Appeal of Town of Sunapee, 126 N.H. 211 (1985). Therefore, both parties shall, within 14 days of the clerk's date below, file:

- (1) the assessment cards on the nonappealed properties;
- (2) a statement that the assessment, and if necessary, the nonappealed properties, were reviewed; and
- (3) a statement as to whether the assessments on the nonappealed properties were correct or not.

Additionally, in reviewing the file, the board discovered conflicting evidence about the size of the appealed lots. For instance, the Taxpayers' brief states each lot consists of 4.2 acres, yet in the property description attached to the brief, the lots were described as being 5.1 acres and 3.2

acres. Further,

Page 2

Fogarty v. Town of Barrington

Docket No.: 14314-93PT

the assessment-record cards attached to the Town's brief listed the lots as being 4.2 acres each. Therefore, in addition to the information above, the parties shall file a statement about the size of the appealed properties and the basis for that statement, e.g., survey plan.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

George Twigg, III, Chairman

---

Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify that copies of the foregoing order have been mailed this date, postage prepaid, to Ivan and Geraldine Fogarty, Taxpayers; and Chairman, Selectmen of Barrington.

Dated: August 30, 1995

---

Melanie J. Ekstrom, Deputy Clerk

0006

Ivan and Geraldine Fogarty

v.

Town of Barrington

Docket No.: 14314-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessments of \$102,400 on Map 1 Lot 5-65-1 (3.2 acres; land only) and \$88,200 on Map 1 Lot 5-65-2 (5.1 acres; land only) (the Properties). The Taxpayers also own, but did not appeal, Map/Lot 11-13-7 assessed at \$130,750 and Map/Lot 14-10 assessed at \$12,300. The Taxpayers 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 granted.

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 carried this burden and proved disproportionality.

The Taxpayers argued the assessments were excessive because:

- 1) a realtor would not list the Properties for more than \$76,000 each;
- 2) the Properties were assessed, based on lot size, higher than Luby's property;
- 3) the Properties lack utilities, have some wetlands, and the road is maintained by land owners;

- 4) the Properties have been well advertised (for a substantial period of time) at various asking prices and only one offer at \$30,000 has been received;
- 5) the taxes have increased from 1987 (\$1,306) to 1993 (\$4,741); and
- 6) the Properties as of April 1, 1993, were worth \$70,000 each.

The Town argued the assessment was proper because:

- 1) a town-wide revaluation was performed in 1992 and all sales that occurred were analyzed to establish values;
- 2) the revaluation impacted waterfront properties the greatest due to supply and demand, scarcity and desirability;
- 3) the Taxpayers failed to present any data to demonstrate the assessments were disproportionate, they failed to present any appraisals or other evidence of market value; and
- 4) subsequent sales demonstrated the assessments were proportional.

The board viewed the Properties with both parties present.

#### **BOARD FINDINGS**

Based on the information presented and the board's view of the Properties, the board finds the Taxpayers' total assessment for all four properties should be \$317,000, which represents a \$16,560 reduction from the original total assessment of \$333,560.

The Taxpayers only appealed two of their properties, but the board is required to consider the assessments on the Taxpayers' entire estate. Appeal of Town of Sunapee, 126 N.H. at 217. Therefore, to be entitled to an abatement, the Taxpayers were required to show that the total \$333,560 assessment was excessive. Page 3  
Fogarty v. Town of Barrington  
Docket No.: 14314-93PT

The board, therefore, asked the parties to submit information on whether the

Taxpayers' nonappealed properties were properly assessed. The Town reviewed the other properties and the appealed Properties, and it recommended the following revised assessments.

**Original Assessments and Town's Revisions**

Lot	Original Assessments	Revised Assessments	Adjustment
*5-65-1	\$102,400	\$82,800	- \$19,600
*5-65-2	\$88,200	\$85,200	- \$3,000
11-13-7	\$130,660 (w/CU)	\$164,650 (w/CU)	+ \$33,990
14-10	\$12,300	\$17,950	+ \$5,650
<b>Totals</b>	\$333,560	\$350,600	+ \$17,040

\*appealed property

The board, having reviewed the Town's information concerning the revised assessments, finds the revisions to be appropriate subject to the board's review of the appealed Properties. Thus, for the Taxpayers to be successful, they must show the appealed Properties were overassessed by more than \$17,040 to be entitled to an abatement.

Concerning to the appealed Properties, the board finds the assessments should have included an additional -20% adjustment attributable either to market adjustment or additional topographical adjustment. We have concluded this adjustment is appropriate for the following reasons.

1) While the Taxpayers did not submit any sales or any appraisals, the Taxpayers included information about their unsuccessful marketing of the Properties. The board had some concerns about whether the Taxpayers had properly marketed the Properties in terms of the asking price, but we find the Taxpayers'

statements that they would have sold the Properties for the assessed value and would have accepted significantly less than the asking prices was credible.

2) While the Town submitted sales to support the assessments, the Town did not perform adequate analysis to convince the board that the sales supported the assessments. Apparently, there was only one sale on Nippo Lake in 1993 (Dotchin), but this was a smaller (.44 acre) lot selling for \$33,000. The other sales were for other lakes. The board is aware that different lakes have different qualities. Based on our review of Quality of New Hampshire Lakes & Ponds, A Layman's Guide (updated December 1994) (New Hampshire Department of Environmental Services), Nippo Lake and North River Lake are similar in size, but Nippo Lake is a deeper lake with much better water quality. Mendums Pond and Swains Lake are substantially larger than Nippo Lake with Mendums Pond being the same depth and approximately the same water quality as Nippo Lake. Swains Lake is shallower with inferior water quality compared to Nippo Lake. While we realize it is a hard task to complete, some information is required to make adjustments, if any are required, between the different lakes.

3) Apparently construction cannot occur on the lake frontage portion of the Property but must occur on the back portion behind the stone wall. From our walking around the Properties, it was clear the Properties are divided into two different topographical areas -- the shore frontage that was lowland with several rock outcroppings and wet areas and the backland behind the stone wall that was a forested area. We have no information about whether the other sales had similar topographical problems.

Based on the board's ordered assessments on the appealed Properties and the Town's accepted revisions on the nonappealed properties, the following are the corrected assessments for 1993.

**Board Revised Assessments**

Lot	Town's Revised Assessments	Factor	Board's Ordered Assessment
5-65-1	\$82,800	x .80	\$66,240
5-65-2	\$85,200	x .80	\$68,160
11-13-7	\$164,650	1.00	\$164,650
14-10	\$12,950	1.00	\$17,950
<b>Totals</b>			\$317,000

This demonstrates that the Taxpayer are entitled to an abatement on \$16,560.

Original Total	\$333,560
Board's Total	\$317,000
Abatement on	\$ 16,560

If the taxes have been paid, the amount paid on the value in excess of \$317,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1994. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within thirty (30) days

Page 6

Fogarty v. Town of Barrington

Page No.: 14314-93PT

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

---

George Twigg, III, Chairman

---

Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Ivan and Geraldine Fogarty; Taxpayers; and Chairman, Board of Selectmen.

Dated: November 13, 1995

---

Melanie J. Ekstrom, Deputy

Clerk

0006