

**Conrad R. Debski**

**v.**

**Town of New Durham**

**Docket No.: 15039-94PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$132,400 (land \$98,500; buildings \$33,900) on a 12,500 square-foot lot with a camp (the Property). The Taxpayer also owns, but did not appeal, another lot in the Town with a \$13,600 assessment. 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 prove the Property was disproportionately assessed.

The Taxpayer argued the assessment was excessive because:

- (1) the Property is disproportionately assessed when compared to neighboring lots such as the Sleeper property;
- (2) waterfront property values have dropped 1/3 in value in the last six years and waterfront sales show the Property is overassessed; and
- (3) the market value in April 1994 was approximately \$100,000.

The Town argued the assessment was proper because:

- (1) Merrymeeting Lake is built up except for some steep lots where septic installation is questionable;
- (2) one-third of the property owners own both sides of the road either for septic or for back-up septic; thus, both the Taxpayer's lots should be viewed as one property when valuing them; and
- (3) the improvements on the Sleeper property may not contribute their full cost to its market value.

#### Board's Rulings

Based on the evidence, we find the Taxpayer did not carry his burden.

The board finds either the greater improvements (garage, stone walls and terracing, artesian well, etc.) on the Sleeper property do not contribute to value their full replacement cost (as the Town argued) or possibly the Sleeper property is underassessed. However, the underassessment of other properties does not prove the overassessment of the Taxpayer's Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayer's assessment because of underassessment on another property would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to other similar properties. E.g., *id.*

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Based on a review of the assessment record cards, the board finds the sales of unimproved lots submitted by the Taxpayer were inferior because they were generally steeper and were unimproved. Further, the Town's explanation that the few lots remaining undeveloped are steep, difficult to build on and have a question of being able to receive a septic to be reasonable and supported by the sales data of improved parcels versus unimproved lots.

Lastly, the board reviewed the sales study performed by the Town and finds it generally supports the value of the Property.

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

\_\_\_\_\_  
Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Conrad R. Debski, Taxpayer; and Chairman, Selectmen of New Durham.

Date: September 27, 1996

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Valerie B. Lanigan, Clerk

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**ORDER**

This order responds to the "Taxpayer's" rehearing motion, which is denied. The motion did not demonstrate that the board erred in its decision, and thus, the motion failed to show any "good reason" to grant a rehearing. See RSA 541:3.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
Paul B. Franklin, Member

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Michele E. LeBrun, Member

**Certification**

I certify that copies of the within Order have this date been mailed, postage prepaid, to Conrad R. Debski, Taxpayer; and Chairman, Selectmen of New Durham.

Date: October 24, 1996

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Valerie B. Lanigan, Clerk