

Conrad Fortin

v.

Town of Epsom

Docket No.: 15097-94PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$247,700 (land \$128,500; buildings \$119,200) on a 1.12-acre lot with a single-family 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 was unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the Property's view consists of mudflats seven months per year when the lake is drawn down;
- (2) the Town does not provide utility services, garbage services, or maintain the road;

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- (3) the state declared Northwood Lake an endangered waterbody because of milfoil, which has a negative impact on the Property's value;
- (4) the milfoil is within 15 feet of the Property's shorefront, which affects recreational use and enjoyment of the water; and
- (5) an October 7, 1993 appraisal estimated a \$170,000 value.

The Town argued the assessment was proper because:

- (1) the Taxpayer's appraisal was flawed because the comparables were not lakefront properties and the adjustments were unsubstantiated;
- (2) an abutting lot with less frontage than the Property was listed for sale for \$299,000;
- (3) the Property has a panoramic view of the lake and has more frontage than the average lot; and
- (4) the assessment was based on market value, and the lack of Town services has no bearing on the value.

**Board's Rulings**

Based on the evidence, the board finds the Taxpayer did not show overassessment.

The board finds the Taxpayer's appraisal to be an unreliable value estimate for this appeal. The appraiser did not use any Northwood Lake sales,

making the appraisal unreliable for tax-appeal purposes. The Property has substantial frontage on Northwood Lake, a boat dock and "excellent views of the lake." Appraisal page 1. Clearly, the Property's major attribute is its waterfrontage, and none of the comparables used by the appraiser were waterfront properties. Moreover, the appraiser did not substantiate whether the adjustment made to the comparables for the lack of waterfrontage were adequate to fully value the Property. Additionally, in the cost analysis, the appraiser only attributed \$45,000 to the site value, which is in stark contrast to the Town's \$125,500 equalized land assessment.

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In summary, the appraisal may have been sufficient for refinancing by providing a conservative value estimate, but the board is not convinced that the appraisal adequately considered the Property's full market value as required by RSA 75:1.

Because the Taxpayer has failed to show the Property was overassessed, the board is not required to address the Taxpayer's other arguments. However, in fairness to the Taxpayer, the board notes as follows.

1) Lack of municipal services is not necessarily evidence of disproportionality. As the basis of assessing property is market value, as defined in RSA 75:1, any effect on value due to lack of municipal services is reflected in the selling price of comparables and consequently in the resulting assessment. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

2) A board paralegal contacted the New Hampshire Water Resources Division. That division stated that while milfoil has been a problem at

several lakes, the division does not declare any waterbody "endangered." Additionally, the Taxpayer indicated that steps have been taken and will be taken to address the milfoil problem.

3) Concerning the Property's aesthetics, especially the change in the view when the lake is lowered, the board finds the Taxpayer did not show that this resulted in overassessment. Moreover, most lakefront property experiences lower water levels in the winter, which may have some effect on the view during the winter but does not affect the property's highest and best use as a waterfront property during the summer.

In future cases, the Town should at a minimum, make some explanation of how the assessment was calculated or submit recent sales that are available to support the assessment.

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

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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. 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 a copy of the foregoing decision has been mailed this date, postage prepaid, to Conrad Fortin, Taxpayer; and Chairman, Selectmen of Epsom.

Date: December 17, 1996

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Valerie B. Lanigan, Clerk