**Ruby A. B. Hurll**

**v.**

**Town of Hopkinton**

**Docket No.: 15288-94PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of $15,450 on a vacant, .31-acre lot (the Property). For the reasons stated below, the appeal for abatement is granted.

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 carried her burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:
(1) due to the Town's zoning, the Property cannot be used for camping or tenting; only the existing outhouse and storage trailer can continue; and
(2) an opinion of value by a realtor as of May 1995 was $8,000 to $10,000 based on the assumption the lot could be used as a camp lot.

The Town argued the assessment was proper because:
(1) an adjustment of 50% was applied to the lot for being unbuildable; and
(2) the lot can be used for daily waterfront access.

**Board's Rulings**

Based on the evidence, the board finds the proper assessment to be $10,900. This is based on a market value finding of $10,000 adjusted by the 1994 Hopkinton equalization ratio of 1.09 ($10,000 x 1.09).

Based on the evidence submitted during the hearing and the October 4, 1996 letter from the Town's attorney, Russell Hilliard Esq., the board concludes the Property has the highest and best use of either continued use for an outhouse and camper on Rolfe Pond or as an access lot to Rolfe Pond for other properties not fronting on the pond. Upon review of the Town's applicable zoning ordinance sections, the board finds any expansion of the non-conforming use of the lot or its structures would have to occur through either a special exception or variance from the Hopkinton Zoning Board of Adjustment. Considering the restrictions placed on the lot by the prohibition of any buildings on a lot having less than 50 feet of frontage, it is unlikely that a more intensive use of the lot would be feasible.

The only evidence as to the proper assessment and/or market value was 1) the property assessment-record card which provided a 50% adjustment for the lot not being buildable; and 2) the Taxpayer's May 23, 1995 letter from a realtor estimating market value to be between $8,000 and $10,000. During the hearing neither the Town nor the Taxpayer were aware of any sales of similar properties to provide any further guidance as to market value. Lacking any documentation from the Town as to the 50% adjustment for the lot not being buildable, the board gives some weight to the realtor's opinion. While the realtor's opinion also is not documented, it is from an individual who is

active in the market and is thus given some weight by the board. Therefore, the board concludes that a reasonable estimate of market value for the Property is $10,000 resulting in a proper assessment of $10,900.

If the taxes have been paid, the amount paid on the value in excess of $10,900 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 1995. 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 "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, <u>not the date this decision is received</u>. 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

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Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Ruby A.B. Hurll, Taxpayer; and Chairman, Selectmen of Hopkinton.

Date: October 24, 1996

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Valerie B. Lanigan, Clerk

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**Ruby A. B. Hurll**

**v.**

**Town of Hopkinton**

**Docket No.: 15288-94PT**

**ORDER**

This order responds to the Taxpayer's November 13, 1996 request for clarification.

The board does not have the statutory authority to answer the Taxpayer's questions and order certain legal uses of the Property. That can only be definitively determined by applications with proper Town officials and appeal to superior court.

The board's October 24, 1996 decision only determined the Property's proper assessment based on a determination from the evidence of the Property's legal highest and best use. The decision is clear as to the basis of the assessment and no further clarification is needed.

Pursuant to RSA 541:6, any appeal of this order by the Taxpayer to the supreme court must be filed within thirty (30) days of the date on this order.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Ruby A. B. Hurll, Taxpayer; and Chairman, Selectmen of Hopkinton.

Date: November 26, 1996

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Valerie B. Lanigan, Clerk

**Ruby A. B. Hurll**

**v.**

**Town of Hopkinton**

**Docket No.: 15288-94PT**

**ORDER**

This order is a request for information from the "Town." The board has held the hearing on this appeal, but the issue of the "Property's" legal use was not resolved. At the hearing, the "Taxpayer" testified the Property had been used as a camp site since 1963 (before the zoning took effect in 1964), and this use included the on-site camper and a tent or a pop-up trailer. The Taxpayer asserted that under sections 4.02 and 4.03 of the zoning ordinance, the use as a tent/camp site was grandfathered. However, the Taxpayer also submitted letters from the Town that created questions concerning the permitted uses.

In valuing any property, the board must determine the property's highest and best use, which includes a review of legal uses. The Town shall, within 20 days of the clerk's date below, file a written statement on the Property's legal uses. The statement shall be copied to the Taxpayer. The statement shall describe the research performed to answer the question and shall also cite to the pertinent ordinance sections (with copies of the sections). Specifically, the Town shall state whether the Property can legally

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to be used as a camp/tent site for seasonal occupancy, including whether a tent or camper (in addition to

or as a substitute for the already on-site camper) may be used on the site. If the Town asserts the Taxpayer's use since 1963 is not grandfathered, the Town shall state the basis for this position.

Upon receipt of the Town's response, the board will deliberate and issue a decision.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Ruby A.B. Hurll, Taxpayer; and Chairman, Selectmen of Hopkinton.

Date: September 16, 1996

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Valerie B. Lanigan, Clerk

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