

**Gail Chase**

**v.**

**Town of Barrington**

**Docket No.: 15300-94PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the following 1994 assessments.

\$31,636 on Lot 18, a vacant, 52-acre lot with 48.5 acres in current use and 3.5 acres not in current use (Lot 18)

\$63,600 on Lot 287B-2, .43-acre lot with a mobile home (the .43-Acre Lot)

\$10,800 on Lot 287B-1B, for the Taxpayer's interests in a common beach (the Beach Lot)

\$97,000 on Lot 287B, a 2.50-acre lot with several camper/mobile homes that are assessed to others (the 2.5 Acre Lot)

The above properties will be collectively referred to as "the Properties."

The Taxpayer also owns, but did not appeal, four other properties in the "Town" with a combined \$9,300 assessment. For the reasons stated below, the appeal for abatements is denied, except the board corrects the Beach Lot assessment to \$8,100.

The Taxpayer has the burden of showing the assessments were 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 did not carry her burden of proof.

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The Taxpayer argued the assessments were excessive because:

- (1) the Taxpayer does not own the Beach Lot rather the lot is owned by 26 other property owners (The Taxpayer admitted she owns three 1/26ths interests in the Beach Lot.); the 1/26th interests were overassessed compared to another similar lot (Speedwell Pines); the interests were assessed on the Beach Lot, and the benefitted lots were also assessed, resulting in double taxation;
- (2) the assessment on the 2.5-Acre Lot was excessive because this lot can only be subdivided once; the assessment was high given the sales prices on comparables; the proper assessment would be \$25,000;
- (3) the .43-Acre Lot is unbuildable but has grandfathered use, it should be assessed at \$500 based on the assumption that the lot is not buildable, especially given the requirements for septic systems;
- (4) the Taxpayer made no argument about Lot 18 and withdrew that lot from consideration; and
- (5) for all the Properties, there was double taxation and errors in assessing lots on paved versus unpaved roads.

The Town argued the assessments were proper because:

- (1) the \$2,700 Beach Lot assessment on each interest was consistent with other such interests in the Town; the Town stated the Beach Lot assessment

assessed the Taxpayer's three 1/26th interests with the remaining interests held by other lot owners; the correct assessment for the Beach Lot should be \$8,100 (\$2,700 x 3);

(2) the 2.5-Acre Lot includes several mobile homes (five or six, one having been removed at some point); the front-foot value was higher given the lot's proximity to the lake;

(3) the .43-Acre Lot was assessed as a developed lot because of the mobile home;

(4) the assessments were based on sales used during the revaluation; and

(5) the Taxpayer did not present any market evidence.

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#### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer did not show overassessment, and therefore, the appeal for abatements is denied. As recommended by the Town, however, the board corrects the Beach Lot assessment to \$8,100 to reflect the presumed three remaining 1/26th interests held by the Taxpayer.

The board must begin with a general comment about the Taxpayer's "Agent's" performance. The Agent was so disorganized the board had a difficult time discerning and following the Agent's arguments both at the hearing and during deliberations. Because of this problem, the board gave the Agent an additional opportunity to organize her presentation, but the Agent still did not do so. For example, at the hearing, the board asked the Agent to submit a deed for the 2.5-Acre Lot and to supply information on the dam easement. The Agent failed to provide the requested documents. The Agent

stated in her September 12, 1996 letter that she had already sent the deed to us, but her statement was not correct. The board only received two deeds: 1) a December 1993 deed from Peabody et al. to Chase of a 3.73-acre lot (However, only the first page of that deed was supplied, and the plan referenced in that deed was never supplied.); and 2) an April 1993 deed from Chase et al. to Peabody for lot 1A and 3A. (It appears, however, that the property described in the December 1993 deed includes not only the 2.5-Acre Lot but also includes the .43-Acre Lot. The Agent did not tell us this. Rather, we sketched the deed's property description and looked at all the copies of plans.)

In any tax appeal, it is essential that the taxpayer explain the property both in terms of its physical attributes and its legal rights and limitations. For example, the Agent asserted the Beach Lot was overassessed because the Beach Lot was, in essence, a common property. But the Agent did not present a clear explanation of how the development was structured, especially the structure of the use of the Beach Lot. The 1993 Chase-to-

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Peabody deed for lots 1A and 3A did not grant an ownership interest in the Beach Lot, but only allowed the use of the Beach Lot "in common with others."

Without a supported description of the Properties, it is almost impossible for the board to determine whether the assessments were correct. It is the Taxpayer's job to make that presentation, especially where the Taxpayer disagrees with the Town's property description.

To the extent the board could decipher the Agent's arguments, the Agent did not perform sufficient analysis to give the board confidence in the Agent's value opinions. For example, the Agent presented several sales, but

she did not perform any sales analysis to compare the attributes of the sales properties with the attributes of an appealed property. It is insufficient for any agent to say, here are some sales, and I think the sales show the assessment should be lowered. Rather, the agent should present the sales and compare the sales to the appealed property.

Turning now to the Agent's evidence, the only document marked at the hearing by the Taxpayer was the 1974 phase I subdivision plan. The Agent did supply some information with the appeal document, and we will review that information now. The board will not consider any of the information the Agent sent in after the hearing because the board did not request any value information after the hearing. See TAX 301.37 (e) (parties must submit evidence at the hearing, and without leave, parties may not submit new evidence).

Concerning Lot 18, the Agent withdrew that Property from consideration at the hearing. The board reviewed the tape and confirmed our recollection. Tape #2, index 600. For some reason, the Agent tried to revive the appeal of Lot 18 in her September 12, 1996 letter. The board denies the request concerning Lot 18 because the Taxpayer's Agent withdrew that property at the hearing.

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Concerning the .43-Acre Lot, the Agent stated the lot was only worth \$500 because the lot was unbuildable. The agent submitted three sales to support her \$500 opinion. However, all three sales were undeveloped lots whereas the Taxpayer's lot has a grandfathered nonconforming use that includes

a manufactured house. Additionally, the Taxpayer's lot is directly on Swain's Lake. One of the Agent's sales was located on a river with beach rights to Long Pond, and another sale only had beach rights to Long Pond. The Agent also submitted a \$15,000 sale at 7 Birch Lane, (.31-acre lot on Swain's Lake) and a \$15,000 listing (.15-acre lot on Swain's Lake). Based on the noncomparability of the sales and the high value on the sale and listing, there is no support for the Agent's assertion that the .43-Acre Lot was only worth \$500.

Concerning the Beach Lot, as stated earlier, the Taxpayer's Agent did an insufficient job of describing the legal title and encumbrances to the Beach Lot. It appears, the Taxpayer retains ownership of the Beach Lot subject to easements held by other lot owners. The board did not receive any documentation that those who have a right to use the beach were conveyed any ownership interest in the Beach Lot. Additionally, we did not receive any documentation that limits that Taxpayer's right to expand the number of lots that can access the Beach Lot.

To the extent the Agent submitted valuation information on the Beach Lot, the board could not conclude that the Taxpayer's Beach Lot was comparable to the Speedwell Pines property because the board was not given any information about the legal structure of the Speedwell Pines' beach property.

Without such information about the Taxpayer's Beach Lot and the Speedwell Pines' beach lot, the board could not make any decisions concerning comparability.

The Taxpayer raises an interesting issue about whether the Town should have separately assessed interests in the Beach Lot or whether the value was already captured in the assessments on lots with rights to use the Beach Lot.

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However, the value placed on interests in the Beach Lot was rather nominal, and the Taxpayer did not show the Town's \$2,700 per interest was excessive. Additionally, as discussed above, the Taxpayer's Agent did not show that the revised \$8,100 assessment overvalued the Taxpayer's rights in the common property, especially where no one introduced evidence concerning limitations on the Taxpayer's right to use of the Beach Lot to benefit additional lots.

Concerning the 2.5-Acre Lot, the Agent did not show overassessment especially where the 2.5-Acre Lot includes five or six mobile-home sites each of which apparently uses the Beach Lot. We also note that the Agent did not supply a complete copy of the deed to this lot. The December 1993 Peabody-to-Chase deed includes this 2.5-Acre lot and includes the .43-Acre Lot. Unfortunately, the Agent only copied the first page of the deed. Thus, the board could not decipher what other rights went with this property. (Another interesting question raised by the deed, which included both the .43-Acre Lot and the 2.5-Acre Lot, is whether these lots should have been assessed as one lot. The lots are not shown as separate lots on the subdivision plan, they were described together in the 1993 deed, and the Taxpayer's Agent testified that the .43-Acre Lot was nonconforming. However, like so many issues in this case, this issue was not sufficiently presented to the board.)

To the extent the Agent presented valuation evidence on the 2.5-Acre Lot, the board could draw no conclusions from it because: 1) the Agent did not present information on this property's highest and best use, i.e., whether it is as presently used or as vacant and subdivided; and 2) the other sales information was not analyzed and compared to the Taxpayer's lot as would normally be done in an appraisal, including addressing issues such as the

subdivision potential of the 2.5-Acre Lot.

For all the above reasons, the board denies the appeal, except we correct the Beach Lot assessment.

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If the taxes have been paid, the amount paid on the value in excess of \$209,636 (Lot 18 \$31,636; .43-Acre Lot \$63,600; Beach Lot interests \$8,100; 2.5-Acre Lot \$97,000 and the four non-appealed properties \$9,300) 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, 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

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Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

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**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Beverly George, Agent for Gail Chase, Taxpayer; Mary E. Pinkham-Langer, Agent for the Town of Barrington; and Chairman, Selectmen of Barrington.

Date: November 20, 1996

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Valerie B. Lanigan, Clerk

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Gail Chase

v.

Town of Barrington

Docket No.: 15300-94PT

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.

The board reviewed the "Town's" information concerning whether Lots 287B and 287B-2 should have been assessed separately or as one lot. The board concludes the Town is treating these lots as separate legal lots, presumably grandfathered, because the lots have been separately leased. See RSA 672:14 (subdivision can occur by leasing). Therefore, the board is not convinced the Town's separate assessment of the lots was erroneous.

To appeal this matter, an appeal must be filed with the supreme court within thirty (30) days of the clerk's date below. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

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**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Beverly George, Agent for Gail Chase, Taxpayer; Mary E. Pinkham-Langer, Agent for the Town of Barrington; and Chairman, Selectmen of Barrington.

Date: April 11, 1997

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Valerie B. Lanigan, Clerk

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**Gail Chase**

**v.**

**Town of Barrington**

**Docket No.: 15300-94PT**

**ORDER**

This order relates to the "Taxpayer's" rehearing motion. Before ruling on the motion, the board wants additional information from the "Town."

The Taxpayer questioned the Town's authority to treat the right-of-way as creating separate taxable lots (Lot 287B, 287B-1 and 287B-2). This separate taxation indicates the lots were subdivided (or are grandfathered as separate lots) and thus can be separately conveyed.

The Town shall, within 30 days of the clerk's date below, file a statement about the basis for separately assessing these lots, including a statement as to the transferability of the lots. (Are the lots legally subdivided?). The Town shall also submit an assessment calculation of the lots as one lot. If the board were to rule the lots are not separately transferable, this calculation would be needed.

The Town shall send its filing to the board and to the Taxpayer's Agent.

The Taxpayer shall then have 10 days to file any response to the Town's submission.

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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 Beverly George, Agent for Gail Chase, Taxpayer; Mary E. Pinkham-Langer, Agent for the Town of Barrington; and Chairman, Selectmen of Barrington.

Date: January 15, 1997

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Valerie B. Lanigan, Clerk

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