

Carl H. and Susan Fischer

v.

Town of Deering

Docket No.: 15812-94PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 adjusted assessment of \$94,800 (land \$61,000; buildings \$33,800) on a .31-acre lot with a camp (the Property). The Taxpayers also own, but did not appeal, another lot contiguous to the Property assessed at \$6,000. 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 denied.

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 failed to carry this burden.

The Taxpayers argued the adjusted assessment was excessive because:

- 1) assessments on comparably sized lakefront lots ranged from \$25,000 to \$61,000;
- 2) comparable lots with similar frontage had lower land assessments than the Property;
- 3) larger lots had lower assessments;
- 4) seasonal properties were assessed higher than year-round properties; and
- 5) the assessment did not reflect a 1977 court ordered boundary adjustment, which reduced the Property's frontage by 20 feet.

The Town argued the adjusted assessment was proper because:

- 1) lakefront properties were valued at \$600 per front foot based on sales used during the revaluation with adjustments for access and topography;
- 2) only three 1994-1995 sales occurred on Deering Lake, but the sales were not market-value transactions;
- 3) the Taxpayers' comparables were not comparable in size and frontage;
- 4) the Property's base-land value was consistent with comparably sized lots with similar frontage before adjustments for topography and access; and
- 5) three sales occurred after the revaluation, which supported the Property's land value.

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

The board finds, the Taxpayers did not show the Property was overassessed.

The Taxpayers did not present any credible evidence of the Property's fair market value. To carry their burden, the Taxpayers should have made a showing of the Property's fair market value. This value would

then have been compared to the Property's assessment and the level of assessment generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18. Not only did the Taxpayers not present any market information, the Taxpayers did not state what they thought the correct assessment should be.

Rather than presenting market data, the Taxpayers attempted to show the Town had assessed the Property differently than certain neighboring properties. However, this assessment comparison also fails. Assessments are required to reflect the differing factors that affect a property's value. For example, some of the Taxpayers' comparables, e.g., Foley and Borsick, received higher undeveloped factors on the assessment-record cards due to lack of septic or because the property was not developed. Additionally, some of the Taxpayers' comparables, e.g., Borsick and Marotta, received higher topography adjustments than the Property. Presumably, these adjustments reflected differences in land quality and levelness. The Taxpayers did not argue that the adjustments on their assessment-record card were incorrect, and because the assessment-record cards must reflect differences in properties, the Taxpayers' assessment comparison fails to carry the Taxpayer's burden.

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 of the reasons supporting the request. RSA 541:4; TAX

201.37(b). A reconsideration motion is granted only if the moving party  
Page 4  
Fischer v. Town of Deering  
Docket No.: 15812-94PT

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

\_\_\_\_\_  
Ignatius MacLellan, Esq., Member

\_\_\_\_\_  
Douglas S. Ricard, Member

**Certification**

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Carl H. and Susan Fischer, Taxpayers; and Chairman, Selectmen of Deering.

Date: November 4, 1996

\_\_\_\_\_  
Valerie B. Lanigan, Clerk