

**Jean O. Petty**

**v.**

**Town of Deering**

**Docket No.: 15819-94PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$167,100 (land \$128,200; buildings \$38,900) on a 2.5-acre lot with a house (the Property). The Taxpayer also owns, but did not appeal, another lot in the Town with a \$1,400, current-use assessment. 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 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 carry her burden.

The Taxpayer argued the assessment was excessive because:

- (1) the Property is seasonal;
- (2) all lakefront properties were overassessed;

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- (3) a comparable lakefront property was listed for sale for two years, but excessive taxes prevented its sale;
- (4) one lakefront property (Goodman-to-O'Brien) sold for \$55,000, but it was assessed \$75,700;
- (5) another lakefront property (Abernathy-to-Faber) sold for \$116,000 only after land was placed in current use;
- (6) the taxes were \$4,907.73, yet the Property was used only two months per year; and
- (7) the Property had an April 1, 1994 value of \$120,000.

The Town argued the assessment was proper because:

- (1) the front-foot price for lake properties was set at \$600 per foot based on sales used during the revaluation;
- (2) the Property's assessment was adjusted to address the access, seasonal nature and beach area;
- (3) the only two sales on the lake were not arm's-length transactions;
- (4) all lakefront properties had an increase in assessment because a sales analysis indicated they were underassessed; and
- (5) the Property's assessment, after adjustments, adequately addressed the Taxpayer's concerns.

### **BOARD'S RULINGS**

Based on the evidence, the board finds the Taxpayer did not show the Property was overassessed. The Taxpayer did not present any credible evidence of the Property's fair market value. To carry her burden, the Taxpayer 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.

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The Taxpayer presented two lakefront sales, but the Taxpayer did not present sufficient information and analysis for the board to draw any conclusions from those two sales.

The Taxpayer complained about the high amount of taxes she must pay. The amount of property taxes paid by the Taxpayer was determined by two factors: 1) the Property's assessment; and 2) the municipality's budget. See generally International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor, i.e., the board decides if the Property was overassessed, resulting in the Taxpayer paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. at 217. The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See The Bretton Woods Company v. Carroll, 84 N.H. 428, 430-31 (1930) (abatement may be granted for disproportionality but not for issues relating to town expenditures); see also Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

While the board admits the sales data is scarce, the Town apparently performed a revaluation with the best available data, which included sales on Deering Lake. The Town then applied its methodology consistently to all Deering Lake properties. This testimony is evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

In summary, the board's overall review of the evidence does not show disproportionality.

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 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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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Jean O. Petty, Taxpayer; and Chairman, Selectmen of Deering.

Date: November 14, 1996

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Valerie B. Lanigan, Clerk