

Robert A. and Mildred V. Livesey

v.

Town of Sandwich

Docket No.: 17093-96PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessments as follows:

\$38,500 on Lot 45, a vacant, 2.3-acre lot;

\$39,800 (land \$38,500; buildings \$1,300) on Lot 45A, a 2.31-acre lot with a utility building; and

\$245,800 (adjusted) on Lot 45B, a vacant, 2.33-acre lot (the Properties).

For the reasons stated below, the appeal for abatements is denied.

The Taxpayer has the burden of showing the assessments were disproportionately high or 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 Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

The Taxpayer's representative argued the assessments were excessive because:

(1) an appraisal, with an effective date of April 1, 1996, estimated the market values for the Properties to be \$24,000 for lot R20/45, \$26,000 for lot R20/45A and \$200,000 for lot R20/45B.

The Town was not represented at the hearing.

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

The Taxpayers' representative, Thomas W. Armstrong, presented an appraisal that estimated the market values to be \$200,000, \$24,000 and \$26,000 for lots 45B, 45 and 45A respectively. While Mr. Armstrong reasonably researched the market and presented a well-organized appraisal, the board finds his value conclusions do not carry the Taxpayers' burden for the following reasons.

#### **Lot 45B**

Mr. Armstrong's appraisal attempts to recognize several unique factors of lot 45B (shallow water frontage, proximity to congested dock areas and the Town beach, and driveway right of way to an adjoining lot) and attempts to quantify the adjustments to the comparables for those factors based on several paired-sales analyses. The board agrees that these are factors the market would generally recognize, and thus, need to be accounted for. However, the board concludes that Mr. Armstrong's adjustments to the comparables for these factors (most of them negative adjustments) have a cumulative effect that results in low indicated values. An example of this is the correction Mr. Armstrong agreed needed to be made to sale L4 for the water depth. Mr.

Armstrong had found that L4 was superior by 20% to the subject Property and had inadvertently added the \$35,000 adjustment rather than subtracting \$35,000. Had the correct adjustment been made, the indicated value by L4 would have been \$107,500. This value Mr. Armstrong agreed was clearly inappropriate for a buildable property on Squam Lake.

Considering the unadjusted sales prices of the five waterfront sales presented by Mr. Armstrong, the board concludes the Town's assessment of \$245,800 reasonably accounts for the unique factors of the lot.

Lots 45 and 45A

The board was unable to place any weight on the value conclusions of Mr. Armstrong's appraisal for lots 45 and 45A. The comparables utilized (the same three comparables for both lots) were of residential lots that had little or

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no lake proximity influence. The two properties being valued are one lot away from Squam Lake and within an easy walking distance (estimated at less than one-quarter of a mile) from the Sandwich Town beach. Mr. Armstrong made no locational adjustment to the comparable sales for being less proximate to the lake. The board finds lots 45's and 45A's close proximity to Squam Lake would be a significant factor in marketing the lots and if comparison were to be made to the three comparables submitted in Mr Armstrong's appraisal, significant locational adjustments would be warranted.

Mr. Armstrong also testified that based on his experience, supplemental acreage to waterfront lots had a value of approximately \$10,000 per acre. Mr. Armstrong's combined value for both lots (4.61 acres) was \$50,000. This equates to approximately \$10,850 an acre, very similar to Mr. Armstrong's

testimony of supplemental land value for waterfront properties. However, these two lots have additional value inasmuch as they are subdivided lots of record and have the right to be built on separately. This simple analysis also supports the board's conclusion that Mr. Armstrong's value conclusion for these two lots are low.

Lastly, the board concludes that even if one were to find the highest and best use for these lots were to be assembled as one, larger waterfront lot, the total assessment of \$324,100 more accurately reflects the collective value of the three lots than Mr. Armstrong's collective value of \$250,000. Viewing the three lots as one parcel would largely mitigate the right-of-way issue on lot 45B along the waterfront and would result in a larger lot providing for greater privacy and flexibility in locating a dwelling similar to many of the comparables. The board understands that legally a voluntary merger action pursuant to RSA 674:39-a would likely be necessary to reassemble these three lots. However, from a valuation standpoint, considering these three lots as one economic unit also indicates that Mr. Armstrong's total valuation of \$250,000 is low (after due consideration is given to the easement mitigation and the excess land).

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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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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas W. Armstrong, Agent for Robert A. and Mildred V. Livesey, Taxpayers; and Chairman, Selectmen of Sandwich.

Date: December 21, 1998

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Valerie B. Lanigan, Clerk

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