

**Florence Braun**

**v.**

**Town of Unity**

**Docket No.: 19519-02PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2002 assessment of \$178,200 (land \$142,000; buildings \$35,200) on a 0.70-acre lot with a single-family home (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer, represented by her brother Charles E. Sova, argued the assessment was excessive because:

(1) the Town set an “arbitrary” value of \$280,000 per acre for all lake property, regardless of shore frontage or other conditions, and failed to consider property values on an individual basis;

(2) negative “influence” factors were applied to some other waterfront properties, but not to the Property;

(3) the Property’s value is diminished due to the land being wet and “swampy” to the right of the driveway and having a “raised” area for the septic system to the left of the driveway;

(4) the Property’s value is also diminished by the lack of year-round Town-maintained access via Cove Road;

(5) the Town erred in measuring the size of the Property (it is 0.7 acres rather than 0.8 acres);  
and

(6) no adequate explanation was given during the informal review process as to why the Property’s assessment increased from \$123,200 in November, 2002 to \$178,200 in December, 2002.

The Town, represented by its assessor Jeff Earls, argued the assessment was proper because:

(1) the three comparable sales submitted for Crescent Lake properties support the assessment;

(2) in December, 2003, the Property was sold for \$225,000, approximately \$50,000 more than the assessment;

(3) wet areas and a raised septic system for a waterfront property are not uncommon;

(4) the Town did not have adequate documentation to correct the acreage in 2002 from 0.8 acres to 0.7 acres, but agrees the correct acreage is 0.7 acres, as shown in the 2003 assessment;

(5) during the tax year 2002 revaluation process, informal reviews occurred and the Town discovered an error in the Property’s land assessment (because the land is waterfront rather than off the water), leading to a necessary revision of the Property’s land assessment and the

Taxpayer was notified in December, 2002 of this change; and

(6) in general, “influence” factors cover many things, and, in this case, they pertain to water frontage features, including view, beach conditions, a dock and other amenities.

The parties stipulated the median level of assessment was 102.2% for tax year 2002.

On May 27, 2005, subsequent to the hearing, the board took a view of the Property and the four properties the Taxpayer’s representative testified received inconsistent influence factors.

### **Board’s Rulings**

The board finds the Taxpayer failed to carry her burden of proof to show the Property was disproportionately assessed.

The Taxpayer argued that, contrary to the board’s Town of Marlow reassessment decision, Docket No. 18478-01RA (July 30, 2001), the Town set an arbitrary per acre value for waterfront property on Crescent Lake. The Taxpayer bases this argument on the fact the Property was valued approximately 14 times more, on average, than non-waterfront properties. Further, the Town’s use of 0.5 acres as the base site for improved home sites for all lake properties is also arbitrary and does not reflect the actual size of many of the home sites.

The board finds these arguments to be misplaced. It is not unusual for assessors to select a uniform size for a base home site that most reflects the size of a typical lot or one that is allowed by zoning. Once a base site size and value has been established, individual property values are determined by adjusting the base site value for the various factors unique to each individual property. In Marlow, unlike this appeal, that municipality uniformly used “the upper limit of the assessment ranges for each of the forest land categories.” The board found this practice to be contrary to the requirements of the current use statute and regulations. See, e.g., RSA 79-A:1, et seq.; and CUB 304.03.

Here, however, the Town established base values for ad valorem assessments of waterfront and other properties and then made adjustments for “influence factors” pertaining to individual lots. The fact the Taxpayer disagrees with the adjustments made by the Town does not result in disproportionality.

The Taxpayer stated that when the Town set the assessment it did not reflect the fact the Property does not have year-round access and that the value should be reduced for this factor. It is common throughout the state, in the board’s experience, for many waterfront properties to only have seasonal access. Whether or not this factor influences the market value of such properties would be reflected in their selling prices.

Assessments must be based on market value. RSA 75:1. The Taxpayer indicated he did not know the market value of the Property as of the assessment date (April 1, 2002) nor did he present evidence regarding the rate of appreciation for property in the Town. The Property sold in December 2003 for \$225,000. This is substantially more than the equalized value of \$174,364 ( $\$178,200 \div 1.022$ ). The board had heard in other cases that a rate of appreciation for residential properties of approximately 1% per month was not unusual in most areas of the state during this time period. Further, during this time period, waterfront properties have been shown to be increasing at a higher rate than non-waterfront properties. Using a 1% per month appreciation rate for the 20 months between the effective date of this appeal, April 1, 2002, and the Property’s sale date, December 2003, results in an indicated value of \$209,237 [ $\$174,364 \times 1.20$ , (rounded)] in December 2003. The fact the Property sold for \$225,000 is an indication the Property was not overassessed on April 1, 2002.

The Taxpayer questioned the application of negative influence factors on some comparable properties located on Crescent Lake while none were applied to the Property.

The Town responded that while the application of influence factors is a subjective practice employed by assessors when comparing properties in similar locations, such as those located on the waterfront of Crescent Lake, it is not an uncommon practice. Further, the assessor testified he had walked the water frontage of all properties on Crescent Lake and made consistent adjustments depending on the location, i.e., if one of the properties was located in a cove, for example, or for the condition and utility of the shoreline. During the board's view, it noted the shoreline of the Property was relatively rock free and that most of the properties that were reviewed and submitted by the Taxpayer had some issue with either a rocky shoreline or a cove location that warranted some adjustment for these negative influence factors. The board reviewed the comparables listed by the Taxpayer, including the Moore, Bemis, Sloan, and Stringer properties, and found that, generally, these properties' adjustments appeared to be consistently and logically applied when rating their water frontage compared to the Property's water frontage.

The Taxpayer contended the Property has an area between the road and the dwelling on both sides of the driveway that is essentially unusable. From the roadway to the cottage on the right is a wet, damp area and to the left there is a raised septic system making that area less usable. As noted earlier, the board finds that for waterfront properties it is not unusual to have raised septic systems and some areas of terrain that are not perfectly level or dry. That is the nature of the land around most bodies of water in this state. Further, the effect these conditions have on the Property's market value is normally reflected in its selling price. Therefore, in this arm's-length transaction, the \$225,000 selling price in December 2003 reflects the purchaser's views on how these various factors impacted the Property's market value. The board can find no good cause to adjust the assessment downward for these factors.

While the board understands the Taxpayer's surprise when the assessment increased after the informal review stage of the reassessment, the Town's explanation was reasonable.

Furthermore, the Town stated at the hearing that the Property had not been recognized as a waterfront property until the Town was reviewing other waterfront properties on Crescent Lake and realized the Property had not been accurately assessed as a waterfront property. The Town stated that once the inaccuracy was discovered, the assessment was revised to bring it in line with the assessments of other waterfront properties on Crescent Lake. Taxpayers need to recognize that initial assessments are subject to correction and change until after the informal review stage when final values are established and reported. Based on the evidence submitted by the Town, that is what occurred here, resulting in an increase in the land value for the Property to accurately account for its waterfront location.

For all the reasons previously discussed, the board finds the Taxpayer has not carried her burden to prove the Property is disproportionately assessed and, therefore, the appeal is denied.

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(f). 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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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Charles E. Sova, 650 Tuttle Hill Road, Orange, New Hampshire 03741, representative for the Taxpayer; and Chairman, Board of Selectmen, Town of Unity, 13 Center Road #1, Charlestown, New Hampshire 03603-7500.

Date: July 18, 2005

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Anne M. Stelmach, Clerk