

**John Pallis**

**v.**

**Town of Wakefield**

**Docket No.: 20118-03PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessments of: \$371,000 (land \$235,400; buildings \$135,600) on Map 42, Lot 79, a 0.89-acre lot; and \$38,000 on Map 42, Lot 80, a 0.21-acre vacant lot (collectively, the “Properties”). 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 assessments were 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 assessments were higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessments were excessive because:

- (1) the Properties were purchased many years ago and the deed to Lot 79 indicates it is really comprised of three lots with only 570 feet of waterfront, not the higher amount (910 feet) shown on the Town's assessment-record card;
- (2) Lot 80 is small, narrow, has a "very steep" slope and is "unbuildable";
- (3) the waterfront is marshy and of poor quality and milfoil is a substantial and growing problem, which should adversely affects the value of both lots;
- (4) the assessment of the land on Lot 79 is too high, but the building assessment (\$135,600) is not in dispute;
- (5) the market value of the Properties is no more than \$313,000 (calculated by adding the assessed building value to a realtor's estimates of \$169,900 for Lot 79 and \$7,500 for Lot 80);  
and
- (6) the maps and other evidence show the Properties are less desirable than other waterfront sales relied upon by the Town.

The Town argued the assessments were proper because:

- (1) the tax maps and other Town records show Lot 79 as one taxable lot;
- (2) the Taxpayer did not mention to the Town (in his abatement application) that the deed reflects three lots (instead of one), but even if this were true, the assessments on three lots would be higher than on one lot;
- (3) the water quality issues mentioned by the Taxpayer, such as milfoil, have not adversely affected waterfront property values in the Town and market values have continued to rise, at a rate of 1½ percent to 2 percent per month (as reflected in the Town's 2005 update following its 2003 revaluation);

- (4) comparable waterfront sales (for both buildable and unbuildable lots) support the assessments;
- (5) the realtor's estimates of value presented by the Taxpayer are not reliable because they rely on sales of water-access and undeveloped lots; and
- (6) the Town is willing to review its records to determine if the waterfront measurements shown on the assessment-record card are accurate and to correct them if necessary.

At the hearing, the board confirmed the level of assessment in the Town in tax year 2003 was 95.5%. The board also gave the Town until June 30, 2006 to check its records and notify the board, copying the Taxpayer, on whether the water frontage of Lot 79 was accurate. The board received a June 27, 2006 letter from the Town with an enclosed new tax map.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer failed to meet his burden of proof to show the Properties were disproportionately assessed.

Assessments must be based on market value, see RSA 75:1. The Taxpayer did not present any credible evidence of the Properties' market value. To carry this burden, the Taxpayer should have made a showing of the Properties' market value. This value would then have been compared to the Properties' assessments and the general level of assessment in the Town/City. See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

The Taxpayer submitted a letter from HUB Realty, (Taxpayer Exhibit No. 1, page 11). The letter, signed by a real estate broker, estimated the value of the land was \$7,500 for Lot 80 and \$169,900 for Lot 79. The realtor did not attend the hearing, and therefore was not available

to answer questions from the Town or the board regarding her estimate. The realtor did not value the building or submit an opinion of value of the Properties in their entirety. In making a decision on value, the board looks at a property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). Further, in estimating the value of the land the Town pointed out that the real estate broker used only sales of water-access lots, rather than actual sales of lots with their own water frontage. The board concurs with the Town that the water-access sales without some adjustments may not give an accurate indication of the Properties' value as the sales are not truly comparable.

The Taxpayer argued the presence of a large amount of milfoil in the water surrounding the Properties was another reason why the land assessments were too high. The Taxpayer provided no market related evidence, however, of the impact of this milfoil on the Properties' market values. During the hearing, the Town stated the presence of milfoil in some areas of the lake had not manifested itself in a reduction in the market value of waterfront properties. The Taxpayer provided (Taxpayer Exhibit No. 1 at page 5 and 6) several newspaper articles highlighting the presence of milfoil growth and the problems it presented in bodies of water in New Hampshire and Maine. Again, however, the Taxpayer presented no market related evidence of the impact, if any, this feature had on the value of properties located on bodies of water where milfoil was present.

Further, in Taxpayer Exhibit No. 1, at page 2A, the Taxpayer noted the discrepancy between the amount of water frontage shown in a deed compared to the amount shown on the assessment-record card. At the close of the hearing, the board left the record open for the Town

to check its records and maps to try to reconcile the amount of water frontage associated with the Properties. In its June 27, 2006 letter to the board, the Town stated the amount of water frontage associated with Lot 79 (which is now designated “Map 78, Lot 8” by the Town) was actually 9 feet more than what had been shown on the assessment-record card (919 feet v. 910 feet). The board finds the Town’s review and letter to be the best evidence regarding the amount of water frontage associated with the Properties. The Taxpayer did not file a response to the Town’s letter.

For all these reasons the board finds the Taxpayer has failed to prove the Properties were disproportionately assessed and the appeal is therefore 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: John E. Pallis, PO Box 42 - 80 Loon Cove Drive, East Wakefield, NH 03830, Taxpayer; and Chairman, Board of Selectmen, Town of Wakefield, 2 High Street, Sanbornville, NH 03872.

Date: August 4, 2006

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Anne M. Stelmach, Clerk