**Helen D. Skeist**

**v.**

**Town of Canaan**

**Docket No.: 20512-03PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2003 assessment of $120,500 (land, $48,500; building, $72,000) on Map 000I-F, Lot 63, a 0.520 acre lot improved with a single family residence (the "Property"). For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) the land is assessed higher than neighboring properties; specifically, the zoning, neighborhood and condition factors are incorrect or inconsistent;

(2) the Property does not have deeded water access;

(3) the land between Goose Pond Road and Goose Pond is not owned by the Taxpayer; and

(4) the zoning should be "Rural 2" with a neighborhood code of "C" with an adjustment of 80% and a condition factor of 135 for a total land assessment of $17,453.

The Town argued the assessment was proper because:

(1) the original assessment of $126,500 was reduced by adjusting the physical depreciation of the building by 7%; the Town made the adjustment to the building as it was reluctant to adjust the land values which could create disproportionality among similar properties;

(2) the neighborhood is in transition from seasonal to year-round properties;

(3) the Town does not know if the Property has water access;

(4) the Property is located on a corner lot which is the reason it is zoned Rural 1;

(5) all improved properties have land condition adjustments of 100; and

(6) the assessment, when equalized, is not excessive and the Taxpayer has presented no evidence of the Property's market value to support her argument that the Property is overassessed.

During the hearings of the two cases heard on December 7, 2005 (Helen D. Skeist v. Town of Canaan, Docket No.: 20512-03PT and Karlya J. Wheeler v. Town of Canaan, Docket No.: 20544-03PT), the parties agreed that due to the similarity of the issues in the two cases, and in lieu of repeating duplicative testimony, the board could take official notice (RSA 541-A:33 V) of the evidence and testimony given in the two proceedings. Therefore, the board's ruling in each case considers the testimony and evidence given in both cases.

**Board's Rulings**

Based on the evidence, the board finds the proper assessment to be $110,300 (land, $32,300; buildings, $78,000) This assessment is based on reducing the land condition factor from 300 to 200 and removing the additional "physical condition" depreciation applied to the dwelling by the Town during the abatement process.

The Town had assessed the Property as if it had deeded water access to Goose Pond applying a 300 condition factor to reflect that right. The uncontested evidence was the Taxpayer has no deeded access to Goose Pond but could obtain a license from the New Hampshire Water Resources Council ("NHWRC") and pay an annual fee to use the NHWRC land that is opposite the Property on the west side of Goose Pond Road. A review of neighboring property record cards submitted as evidence indicates the Town had applied a condition factor of 300 to other properties with actual deeded easements to Goose Pond but no other property had a comparable situation of close proximity to Goose Pond and NHWRC property but no deeded water rights. Consequently, the board has utilized its experience and judgment and adjusted the condition factor to 200 to recognize the Property's proximity to the pond but no direct legal access to it.

The board also reviewed the various assessment record cards relative to the Taxpayer's argument that the "neighborhood code" of "E" (a 100 percent rating) should be changed to a "neighborhood code" of "C" (an 80 percent rating) due to the Property being accessed from Gould Road and not Goose Pond Road. Without access to the neighborhood delineations and any sales analysis that initially established those neighborhoods [the Town testified that it had not seen nor did it possess any such reassessment documentation presumably done by the contract assessing firm, Avitar Associates of New England, Inc. ("Avitar") during the 2003 update of assessments], it is difficult to definitively determine which factor is most appropriate.

However, again based on the board's experience and the limited evidence before it, the board concludes the Property's value is influenced more by its proximity to Goose Pond and its ability to obtain a license to use the adjoining NHWRC land than other properties on Gould Road that are more distant from Goose Pond. Thus the board concludes the "neighborhood code" of "E" (the 100 percent rating) is appropriate.

The board has also removed the additional 7 percent "physical depreciation" applied to the dwelling by the Town during the abatement process because the Town stated it was an attempt to abate the assessment without changing Avitar's land assessment methodology. On balance the board concludes correcting the land assessment to accurately reflect the Property's lack of deeded water access but keeping the dwelling assessment as originally calculated results in an assessment with a higher chance of being proportional. Ideally, market data would be the ultimate guide for determining a proportionate assessment (RSA 75:1), but no sales were submitted by either party.[1]

If the taxes have been paid, the amount paid on the value in excess of $110,300 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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, <u>not the date this decision is received</u>. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity

[1] The Town attempted to submit what few sales had occurred in the Goose Pond neighborhood during the past several years but due to the Town failing to timely notify the Taxpayer of the comparables it wished to submit 14 days prior to the hearing (Tax 201.33(b)), the board sustained the Taxpayer's objection to their submission.

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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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Helen D. Skeist, 3 Gould Road, Canaan, NH 03741, Taxpayer; and Chairman, Board of Selectmen, Town of Canaan, PO Box 38, Canaan, NH 03741.

Date: 1/27/06

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Melanie J. Ekstrom, Deputy Clerk