

**R. David Hutchinson, Donald Hutchinson and Hutchinson Living Trust**

**v.**

**Town of Northwood**

**Docket No.: 22337-05PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2005 assessment of Map 121, Lot 08 - \$442,400 (land \$332,300; building \$110,100) a single family home on a 0.21 acre lot (the “Property”). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) the seasonal camp utilizes lake water and does not have a well or municipal water supply; its actual condition is overstated because it does not have a basement, is supported by stones, has limited insulation and its heating system is limited to a propane space heater in the living room;

- (2) the Taxpayers only have seasonal access to the Property via a private, 10 foot wide right of way over an abutting property, Map 121, Lot 07, which travels approximately 1.3 miles to the nearest Town maintained road;
- (3) a large logging operation along the right of way has diminished the esthetic qualities of the neighborhood in addition to creating potholes and ruts in the private access road;
- (4) the Property includes 75 feet of frontage on a small, shallow cove and 125 feet of frontage on the open lake;
- (5) the shoreline is mostly rocky with a small sandy area in the cove;
- (6) the large increase in taxes has caused them a hardship; and
- (7) an "Appraisal" performed by Ms. Laura J. Davies, a New Hampshire Certified General Appraiser from Crafts Appraisal Associates, Ltd., estimated the Property's April 1, 2005 market value to be \$345,000 which indicates an abatement is warranted.

The Town argued the assessment was proper because a comparison of the Property's assessment to three comparable properties (Municipality Exhibit A) indicates the Property is not overassessed.

The parties stipulated the overall level of assessment for the Town was 100% for tax year 2005.

Initially, this case was docketed with the appeal of Map 121, Lot 07. Prior to beginning the hearing, the board determined the two lots, Map 121, Lot 07 and Map 121, Lot 08, were held in similar but not exactly the same form of ownership. The Property, Map 121, Lot 08, is owned by R. David Hutchinson, Donald Hutchinson and the Hutchinson Living Trust and Map 121, Lot 07 is owned by R. David Hutchinson and the Hutchinson Living Trust. Therefore, a separate docket was set up for Map 121, Lot 07 (Docket No.: 23391-05PT). Because some of the issues

were similar for the two properties and pursuant to board rule Tax 203.07(a), the testimony on both appeals was consolidated for hearing purposes.

### **Board's Rulings**

The board finds the proper assessment for the Property to be \$375,000 based on a market value finding of \$375,000 and the Town's 2005 level of assessment of 100%.

In arriving at its decision, the board considered all the issues raised by the Taxpayer including a review of all the properties (listed in the index as comps B-L) provided for comparison in the Taxpayers' presentation packet (Taxpayer Exhibit No. 1) and the Appraisal prepared by Ms. Davies. The board finds the best evidence of the Property's April 1, 2005 market value is contained in the Appraisal. The Appraisal developed an opinion of value using the comparable sales approach; one of three, distinct appraisal methods of data analysis. Appraisal Institute, The Appraisal of Real Estate, 62 (12<sup>th</sup> ed. 2001). The comparative value analysis chart (the "chart") contained on page 28 of the Appraisal, with some revisions, provides the basis for the board's findings. The board reviewed all the comparable sales used in the chart and finds the most applicable sales and the best indicators of the Property's market value are comparable sales B-4 and 5. The board finds comparable sales B-1, B-2 and B-3 cannot be given weight for several reasons. First, the magnitude of the net adjustments made to each of these sales is substantially larger than those required for sales B-4 and 5 and calls into question their comparability to the Property. As an example, sale B-1 had a net adjustment greater than one third of its selling price. Second, sale B-2 required a substantial adjustment (\$94,800) for its year round occupancy compared to the Property's seasonal nature. Sale B-3 received an adjustment for this factor as well but because its access is provided at least partially by private rights of way (see Town tax maps 119 and 121 in Municipality Exhibit A) the adjustment was

reduced. The access to sale B-3 also raises a question as to its year round use. The board finds comparisons of properties with year round occupancy capabilities to the Property with its clearly seasonal-only use do not provide reliable indications of value. However, based on its experience,<sup>1</sup> the board finds the value indications, with some adjustments, provided by comparable sales B-4 and 5, two seasonal use properties, to be reliable. First, the board finds an adjustment for market conditions (time) of 1% per month more accurately depicts the real estate market between the time of the transfers of the comparable sales and the effective assessment date of April 1, 2005. This equates to a positive 17% adjustment to sale B-4 and a negative 6% adjustment to sale 5. Second, the board has changed the gross living area (GLA) adjustment from \$20.00 to \$30.00 per square foot to more accurately reflect the contributory value of the additional living space of the Property. In addition to these adjustments made to both sales, the board has made an adjustment to the condition factor for the shore line of comparable sale 5 reducing the 15% adjustment to 5%. Although it is certainly preferable to have a nice sandy beach, the board finds the 15% adjustment, which is more than \$50,000, overstates the contributory value of this feature. Making all the previously discussed revisions yields new indications of the Property's market value based on comparable sales B-4 and 5 of \$375,000 (rounded) and \$375,500 respectively. The board reconciled these values to a \$375,000 market value for the Property on April 1, 2005.

The board reviewed the Town's submission (Municipality Exhibit A) which compared the Property to three waterfront properties which had sold. The board questions the comparability of sale B-1 because it is listed as a "ranch" in "good" condition and may be

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<sup>1</sup> The agency' experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33, VI; Appeal of City of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

available for more than just seasonal use. The board further questions the Town's lack of an adjustment to comparable B-3 for its inferior location on Northwood Lake compared to the Property's location on Pleasant Lake. The board noted the Town accounted for this factor in its analysis of Map 121, Lot 7 (BTLA Docket No. 23391-05PT, Municipality Exhibit A) when it adjusted the property located at 1577 First New Hampshire Turnpike by \$40,000 for the same locational difference. It appears a similar adjustment should have been made in this case.

Further, the board finds the Town's \$50 per square foot adjustment for differences in the gross living areas between the Property and the sales significantly overstates the contributory value of any additional area given the fact the Property's dwelling is a seasonal, 65 year old camp heated by a space heater and without a potable water supply. For these reasons, the board finds the Town's submission provides questionable support for the current assessment.

In summary, after reviewing the parties' submissions and testimony, the board finds the best evidence of the Property's market value is contained in the Appraisal. Therefore, the board finds the Taxpayers carried their burden to show the Property was disproportionately assessed and further finds the proper assessment to be \$375,000.

If the taxes have been paid, the amount paid on the value in excess of \$375,000 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 assessments 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, 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(g). 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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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: L. Bradley Hutchinson, 44 Clifford Street, Melrose, MA 02176, representative for the Taxpayers; Chairman, Board of Selectmen, Town of Northwood, 818 First NH Turnpike, Northwood, NH 03261; and Brett S. Purvis & Associates, Inc., 3 High Street, 2A PO Box 767 Sanbornville, NH 03872, Contracted Assessing Firm.

Date: November 20, 2008

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Anne M. Stelmach, Clerk