

Barbara Fotiades and Richard Fotiades

v.

Town of Durham

Docket No. 5585-88

David Moskoff and Daphne Fotiades

v.

Town of Durham

Docket No. 5586-88

DECISION

These cases were consolidated for hearing as the four lots in question are in the same subdivision, the arguments raised by the taxpayers were the same, and both parties were represented by David Moskoff and Daphne Fotiades, sister of Richard Fotiades.

The Taxpayers appeal, pursuant to RSA 76:16-a, the Town's 1988 assessments as follows:

Barbara & Richard Fotiades:

Lot 2	\$120,300
Lot 4	\$118,900

David Moskoff and Daphne Fotiades:

Lot 24	\$116,400
Lot 26	\$119,800

All four parcels are unimproved lots in the Deer Point subdivision off Durham Point Road.

The Taxpayers argued the assessments were excessive because: 1) the influence factor, originally 1.9 and then lowered to 1.7 was disproportionately high compared to better neighborhoods fronting on Great Bay; 2) the town's

assessment based too much emphasis on the potential desirability of the Deer

Point subdivision as a whole; 3) the town did not have a different influence factor for waterfront versus non-waterfront properties in the Deer Point subdivision; 4) the taxpayers purchased the lots for their asking prices in May of 1987 (Lot 2 - \$90,000; Lot 4 - \$100,000; Lot 24 - \$95,000; Lot 26 - \$95,000) which were the highest prices paid in the subdivision for non-waterfront lots, and; 5) the taxpayers felt they overpaid 5 to 10 thousand dollars for each lot and the 1988 assessments should be in the low \$90,000 range.

The Taxpayers also requested the Board assess costs against M.M.C., Inc., the appraisal firm contracted by the Town, for causing unnecessary appeals.

Scott Bartlett, appraiser for M.M.C., at hearing, recommended lowering the influence factor to 1.6 and revising the assessments to: Lot 2 - \$100,300; Lot 4 - \$101,500; Lot 24 - \$99,000; Lot 26 - \$101,000.

He argued Deer Point lots had a higher influence factor than other lots in the area due to their rights to the common land and the right-of-way to the water, and all lots fronting on the water had a higher condition factor to account further for that market influence.

He argued the revised assessments were reasonable in light of sales of these and similar lots in 1986 and 1987 for \$85,000 to \$100,000 and an appreciation rate of 2 1/2% per month in that time period through 1988.

The taxpayers written and verbal evidence focused heavily on M.M.C.'s methodology. While M.M.C.'s original influence factors indicated a larger distinction between the Deer Point lots and other lots in the area than the market recognized and resulted in excessive assessments, we find the revised factor and assessments are reasonable given the sales data and real estate appreciation that existed in 1986 - 1988.

As to the taxpayer's argument that they overpaid for the lots by agreeing to the asking price and thus any assessments based on those sales are excessive, we find that argument wanting given the context of the market at and just prior to the assessment date. It was not unusual in 1987 and early 1988 for asking prices to be the actual transfer price. It was a "sellers" market during that time period. Timing in many cases, not 5-10% of the asking price, was a larger concern to investors and builders because property was

appreciating and turning over so rapidly. The Taxpayers were definitely knowledgeable of this market;

Daphne was a member of the planning board in Newmarket, N.H. for several years and her brother, Richard, was a builder. While it is conceivable with hind sight to believe they could have negotiated a lower price, the testimony is clear the the sales price reflected the lots value in the market that existed at that time.

Therefore, the Board rules the proper 1988 assessments are as follows:

Lot 2	\$100,300
Lot 4	\$101,500
Lot 24	\$ 99,000
Lot 26	\$101,000

The Board denies the Taxpayer's requests for costs. We find that M.M.C.'s actions and judgement were not so arbitrary and unreasonable as to compel the assessment of costs. We note several days prior to the hearing that the M.M.C. representative proposed the revised assessments to the taxpayers and the taxpayers chose to continue the appeal. Neither party should be faulted or required to pay costs to continue a reasonable disagreement over market value, elusive as it often is.

It has been said that "(t)he search for 'fair market value' is a snipe hunt carried on at midnight on a moonless landscape." Fusegni v. Portsmouth Housing Auth., 114 N.H. 207, 211 (1974) (quoting Bigham, "Fair Market Value", "Just Compensation", and the Constitution: A Critical View, 24 Vand. L. Rev. 63, 90 (1970)).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Member

Michele E. LeBrun, Member

Date: July 22, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Richard & Barbara Fotiades and David & Daphne Moskoff, taxpayers; the Chairman, Selectmen of Durham; and Scott Bartlett, Appraiser for M.M.C., Inc.

Brenda Tibbetts, Clerk

Date: July 22, 1991

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