

Webster Land Corporation

v.

Town of Holderness

Docket No.: 9826-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessments on the following lots (the Properties).

<u>Assessment</u>	<u>Map/Lot Number</u>	<u>Description</u>
\$1,996,700	Map 10, Lot 23	a vacant, 14.50-acre lot (Algonquin Point)
\$ 57,000	Map 11, Lot 20	a vacant, 2.0-acre lot
\$ 69,100	Map 11, Lot 26	a .24-acre lot with a shed and pumphouse
\$ 65,000	Map 11, Lot 30	a vacant, .40-acre lot (Checkerberry Island)
\$ 600,100	Map 11, Lot 70A	a vacant, 7.2-acre lot

For the reasons stated below, the appeal for abatements is granted in part and denied in part.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden.

This appeal raised both legal and valuation issues which the board will address separately.

Legal Arguments

The Town raised two legal arguments at the hearing in essence to preclude the board from either having jurisdiction in the case or having to arrive at a valuation conclusion. First, the Town argued the Taxpayer did not have standing before the board because the Taxpayer had not shown good cause at the local level when requesting an abatement from the Town. Second, the Town argued the Taxpayer failed in their burden of proving the assessment was disproportional because it had not proved the general level of assessment in the Town in 1991.

The Taxpayer argued it had standing before the board because it had provided adequate bases for its request for abatement with the Town. Secondly, the Taxpayer also argued there is more than one way to prove disproportionate assessment, and it was not necessary to prove the general level of assessment to carry their burden.

The Taxpayer further asserted that the Town's differing base unit values for property on Squam Lake and in general residential and rural residential areas creates separate classes of property that are unlawful, according to Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985).

Board's Ruling on Legal Issues

Standing

The board reviewed the application for abatements the Taxpayer had submitted to the Town and finds the information attached to them was adequate to

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fulfill its burden of showing good cause at the local level.

The descriptions provided by the Taxpayer adequately described its general concerns with the assessments on a property by property basis. While the Taxpayer did not submit all its proof at the local level, the general concerns as to the nature of the overassessments were raised for each Property. The board rules this is adequate to at least preserve its standing to appeal the Town's decision. Obviously, the board always encourages the parties to have a full discovery process and discussion as to the merits of the assessments at the local level. However, lack of the full discussion does not preclude a taxpayer from having standing to appeal.

General Level of Assessment

In this issue the Town attempted to stonewall the Taxpayer's ability to present any evidence dealing with valuation by stating the Taxpayer had not fulfilled its burden in proving what the general level of assessment was within the community.

The board has addressed this issue in several cases from the city of Nashua. The N. H. Supreme Court recently stated in Appeal of the City of Nashua, ___ (March 3, 1994), "...in tax abatement cases before the board a municipality must disclose its preferred equalization ratio" and further [the city has a] "preexisting obligation to use some method to equalize tax assessment to ensure proportionality." Appeal of Andrews, 136 N.H. at 63, 611 A.2d at 633".

Clearly the court held in the Appeal of the City of Nashua that municipalities cannot stonewall taxpayers simply by stating the taxpayers did not fulfill their burden of proof when the Town has not stipulated to or used an equalization ratio of

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their own.

In this case, the board finds the general level of assessment within Holderness for 1990 was 101% or approximately fair market value.

The board bases its ruling on the following evidence:

- (1) the department of revenue administration determined an equalization ratio of 101% for 1990;
- (2) Apple Appraisal's Memorandum of Agreement with the Town of Holderness to perform the reassessment is structured so the assessments will approximate market value (for example, at page four of Memorandum of Agreement "Before the final values are established a careful comparison of appraisals shall be made with the values established by sales occurring within two years prior to and during the progress of the evaluation so that the time of the completion of the evaluation all values will reflect the market value at that time." (emphasis added)); and
- (3) the appraisal manual assembled by Apple Appraisal, Inc. for the Town incorporates at the time of the reassessment and reflects the sales data analyzed as indicated in the Memorandum of Agreement.

As the board enunciated in the Birch Pond Office Park Associates and New England Mutual Life Insurance Co. v. City of Nashua, Docket Nos.: 4246-88, 5894-89 and 8471-90 subsequently appealed and decided by the supreme court Appeal of the City of Nashua, the determination of equitable assessments rests on a three-legged stool. The three legs are: (1) accurate physical description of the property; (2) relevant market data; and (3) determination of the general level of assessment. The Appeal of the City of Nashua has now established that the municipality must

proffer its opinion as to the general level of assessment to fulfill its preexisting burden of establishing proper assessments. In this case, because the Town refused to proffer its opinion, the board analyzed the evidence and found that the 1990 general level of assessment was 101%.

Having established the general level of assessments, it is then the burden of the taxpayer to show the assessments are excessive due to either grossly inaccurate physical description of the property or by relevant market data.

The board does not agree with the Taxpayer that one test of disproportionality is to show the appealed Property is disproportionately assessed in comparison to other similar property. Such test is not conclusive because other properties could also be improperly assessed. All assessments must be proportional to market value. The focus of our inquiry is always proportionality, requiring a review of the assessment to determine whether the property is assessed at a higher level relative to market value than the level generally prevailing. Appeal of Town of Sunapee, 126 N.H. 219; Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982).

Separate Classes of Property

The board rules the Town's assessment methodology of assigning differing base values to land does not create separate classes. Rather, it is simply a method to attribute value to land that is influenced by different factors (e.g. waterfront, subdivision settings, rural residential settings etc.). While the resulting values are subject to dispute and appeal, the Town's use of differing base values is appropriate methodology to arrive at assessments relative to market value. To not recognize these differing valuation factors would result in gross disproportionality amongst

land values. Thus the question is not whether the Town's methodology was legal but whether the base values were reasonably derived from the market and properly applied to the Taxpayer's Properties.

We now proceed to the issue of proper valuation.

Valuation Arguments

The Taxpayer argued the assessments were excessive because:

Map 10, Lot 23

- 1) the Town assumed the lot was approved for subdivision into five buildable lots when assessing the value, and accordingly assessed the parcel as five, ready-for-sale, building lots, even though there was no subdivision approval;
- 2) the lot was appraised as a three-lot subdivision, and a three-lot subdivision approval was recorded October 26, 1990;
- 3) an appraiser estimated a combined, \$1,825,000 fair market value for the three lots in January, 1991, and because the lot's conditions had not changed, the estimated value also applied to 1990;
- 4) subdivision approval was subject to completion of a road and a common leachfield; and
- 5) in June, 1991, lot-line adjustments were made to the subdivision in order to build the roads, and because of a disgruntled abutter, the new lots could not be sold.

Map 11, Lot 20

- 1) the lot is triangular shaped, is only two acres, and is located in the residential district, yet the lot value was increased by 250%;
- 2) the Town's comparable did not sell until September, 1992;

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- 3) the standard value for a one-acre lot in the residential district is valued at only \$20,000;
- 4) the lot has a gully; a waterline from a pumphouse across the street runs through the lot, and the lot has a well that services abutting lots, resulting in a negative impact on the lot's value and affects the installation of a septic system;
- 5) the shape and terrain of the lot negatively impact the value;
- 6) an appraiser estimated a \$20,000 fair market value as of April 1, 1990; and
- 7) the problems associated with the lot prevent any construction.

Map 11, Lot 26

- 1) the lot should be discounted more than .35 because it is not buildable;
- 2) the Town did not apply the same per-unit conditions to this lot as compared to other lots, whether mainland or island properties;
- 3) a lot should be assessed unbuildable without considering the lot's location
- 4) the highest and best use of the lot would be to park cars or to have a dock; and
- 5) an appraiser estimated a \$35,000 market value.

Map 11, Lot 30

- 1) the unit price per-acre on this lot is \$260, yet Perch Island, a smaller island, is only \$220 per-acre, which contradicts the Town's methodology that smaller lots have higher prices;
- 2) the lot is extremely small and is not buildable and the shallow rocky edge prevents boat access; and
- 3) an appraiser estimated a \$25,000 fair market value.

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Map 11, Lot 70A

- 1) a stream bisects the lot, the water frontage is below average, the road access is dangerous, and the lot contains wetlands and swamps;
 - 2) the lot contains podunt soils which will not support a septic system;
 - 3) the highest and best use of the lot would be as a campsite;
 - 4) an appraiser estimated a \$145,000 market value assuming the lot was buildable;
- and
- 5) the Town's comparable is not comparable because it is only near the water.

The Town argued the assessments were proper because:

Map 10, Lot 23

- 1) subdivision for the lot was approved prior to April 1, 1990 and, in fact, was approved prior to even the planning board's existence;
 - 2) the existence of five separate, buildable lots, as well as market value, was considered in assessing the lot's value;
 - 3) the lot was assessed with the most likely configuration -- a five-lot subdivision, and the lot has contributory value and encompasses an entire peninsula;
 - 4) the lots were significantly discounted due to the costs of developing and marketing the Property including subdivision, roads, septic and topography, etc.;
- and
- 5) if the lot was valued as a single parcel and not as a marketable, five-lot subdivision, the assessed value would be approximately \$1,500,000.

Map 11, Lot 20

- 1) the lot's view and proximity to the lake increased the value;
- 2) a comparable lot sold for \$225,000;
- 3) the lot value was enhanced 250% to account for its partial view and proximity to Squam Lake;
- 3) septic system approval was never requested for the lot and, therefore, there is no proof that the lot is not buildable; and
- 4) the lot has deeded access to the lake across the street.

Map 11, Lot 26

- 1) the lot was not discounted for being unbuildable because of its location on the lake and its ability to support a dock;
- 2) there are very few public lake access points on Squam Lake and, therefore, an unbuildable lot that offers a landowner private swimming and boat-launch access increases the value of the lot; and
- 3) a lot on a peninsula inaccessible by mainland (Map 3B Lot 62) sold with an unbuildable access lot used for private water access sold for \$450,000 in September, 1988 and the contributory value of the access lot was \$103,000.

Map 11, Lot 30

- 1) as lot sizes increase, unit prices decrease;
- 2) the lot, being an island, was assessed accordingly with appropriate reductions for topography, access, etc.
- 3) the lot could house a shed for ice fishing; and
- 4) the lot's value would have been increased by 75% if it lot were located on the

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mainland.

Map 11, Lot 70A

- 1) the lot's soil condition is a factor in determining the assessed value, and the mere existence of podunk soil does not make a lot unbuildable;
- 2) the lot was given a greater condition factor than normal to address the waterfrontage;
- 3) because septic system approval has never been denied, the lot was assessed as a buildable lot;
- 4) only 2/3 of the lot is podunk soil, and the county's soils maps are not 100% accurate;
- 5) the stream runs along the lot's boundary line and even the stream's mouth is on the boundary line; and
- 6) a comparable property with less road frontage sold with a camp for \$415,000.

Board's Ruling on Valuation

Map 10, Lot 23 (Algonquin Point)

The board finds the best evidence of market value to be the Taxpayer's appraisal performed by New England Appraisal Company, which found a market value as of April 1, 1990 of \$1,825,000.

The board has reviewed all the evidence submitted by both parties and gives some weight to the adjoining sale submitted by the Town, the Lanier property. However, the board notes this property is significantly different than Lot 23 in that it is comprised of several separately assessed lots, improved with several structures and bisected by access roads.

The board finds, as of April 1, 1990, the highest and best use of Lot 23 was for the potential of a three lot subdivision. The desirability of large private lots and the need for a common leachfield support the finding that the three lot subdivision as proposed was a reasonable method of achieving the highest and best use of the Property.

The board finds the \$150,000 reduction in the Taxpayer's appraisal of the gross value of the three lots is reasonable to account for the associated road costs and septic system costs to make the lots marketable. While the appraiser discusses in the text of his appraisal a possible affect of high taxes on value and even offers an estimated reduction in value due to that factor, his final value correlation does not include an adjustment for the affect of high taxes. The board finds such affect to be speculative and not supported by any market data in the appraisal.

Therefore, the board rules the proper assessed value for Lot 23 is 1,843,250 (1,825,000 x 1.01)

Map 11, Lot 20 and Lot 26

The board addresses the value issue on these two lots together because the board's concludes the highest and best use of the two lots is as combined as one estate. The board must, in determining whether assessments are proportionate to market value, consider the taxpayer's entire estate. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). Lot 26 is a .24 acre lot on Squam Lake and directly across the road from Lot 20, a vacant, 2-acre parcel of land with a well. The board finds the combined assessment of \$126,100 is very reasonable for essentially a vacant (minimally improved) 2.24-acre parcel fronting on Squam Lake and bisected

by a road. While these lots appear to be separate lots of record and could be marketed separately, the highest and best use would be achieved by marketing them as one estate.

The Taxpayer's appraiser questioned the ability for Lot 20 to be built on, due to an intermittent stream and a well on the Property. However, he concluded that there was not the concrete evidence to prove it was unbuildable. Therefore, he appraised it as a buildable lot, by comparing it to sales of lots that were not adjacent to or associated with Squam Lake. His analysis is flawed, however, in that it does not consider the significant influence of the lot's location to and partial view of Squam Lake.

The Taxpayer appraised Lot 26 independent from its proximity to the vacant Lot 20 and arrived at its value based on a conclusion of the highest and best use being a parking lot and dock location for island access. His value estimate was derived by the market approach from the sales of boat slips. Again, his appraisal is flawed in that it ignores the synergistic effect on value of considering the two lots as one estate.

In addition to the assessment being in excess of market value, the Taxpayer argued other lots similarly situated were assessed for less. Again, as the board stated in the legal section of this decision, proof of disproportionate assessment must always be relative to market value and not simply based on assessments of other similar property because other property could be incorrectly assessed. The board must always review assessments relative to market value as required by RSA 75:1.

Map 11, Lot 30 (Checkerberry Island)

The board finds the proper assessed value for Checkerberry Island to be \$26,000. This assessment is ordered because:

- (1) the island has very limited utility due to its .4-acre size, its rocky shore frontage and its very close proximity (and therefore lack of privacy) to Groton Island;
- (2) due to these features, the lot is most likely not buildable and has limited value as a camp site and for other minimal, recreational purposes; and
- (3) the condition factor on the Town's assessment-record card should be reduced from .25 to .1 to account for these features.

Map 11, Lot 70A

The board finds the proper assessed value for this Lot to be \$300,100. This assessment is ordered because:

- (1) the photographs and description of this lot by the Taxpayer's appraiser raises significant questions as to whether the lot is buildable;
- (2) while conclusive evidence was not submitted that the lot was unbuildable, there is enough physical evidence that any prospective purchaser of the lot would surely question the lot's buildable nature;
- (3) the utility of the frontage due to the swamp adjacent to the lot and the intervening narrow ridge of land along the shore would be a further detriment to the price any prospective buyer would pay for the lot;
- (4) the Town noted two sales to support the assessed value; however, both are improved and can be fully utilized as seasonal waterfront properties; and the access issue related to one of the sales, Map 3B, Lot 62, while indeed a factor, does not

appear to preclude the utility of the property for recreational purposes; thus these sales are given little weight by the board;

(5) assessors must consider all factors that would affect value, even if it has not been conclusively proven that such factors prohibit a significant property right (e.g. ability to build, as in this case) Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975); and

(6) based on the above findings, the board rules the proper condition factor to be applied to the site should be .6, resulting in a total value of \$300,100.

Summary

In summary, the board finds the following assessments to be proper:

Map 10; Lot 23 \$1,843,250

Map 11; Lot 20 \$57,000

Map 11; Lot 26 \$69,100

Map 11; Lot 30 \$26,000

Map 11; Lot 70A \$300,100

If the taxes have been paid, the amount paid on the value in excess of those summarized above shall be refunded with interest at six percent per annum from date paid to refund date.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) 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

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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 law.

Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Dennis N. Perreault, Esq., Agent for Webster Land Corp., Taxpayer; and Chairman, Selectmen of Holderness.

Dated: May 4, 1994

Valerie B. Lanigan, Clerk

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