

Howard F. and Joan W. Canning

v.

Town of Moultonborough

Docket No.: 11126-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$197,000 (land only) consisting of 2.8 acres with 138 front-feet on Lake Winnepesaukee (the Property). The Taxpayers own, but did not appeal two other lots in the Town with a combined \$389,400 assessment. The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

1) the Property was purchased in 1991 at a bank auction for \$114,500 plus unpaid taxes;

- 2) the Property has several adverse conditions (all detailed in the Taxpayers' report), including an easement, an abutting telephone station, a rocky shore, a lack of adequate water depth, and located near a yacht club;
- 3) the Property is not even a good wood lot;
- 4) the top portion cannot be sold separately and must remain to serve as a possible leachfield for the waterfront portion; and
- 5) a culvert directs road runoff onto the lot.

The Town argued the assessment was proper because:

- 1) the Town was reassessed as of April 1, 1986, and during the revaluation a sales analysis determined front-foot values for the Property's area was \$2000 per front foot;
- 2) no adjustments were made due to the Property's location next to the Quayside Yacht Club because there was no market evidence indicating adjustments were needed;
- 3) the Taxpayers' lot was assessed in the same manner as the other lake lots;
- 4) the switching station's location would have little effect on the Property's value;
- 5) the Property has rocks along the shore, but once in the water there is a nice sandy bottom;
- 6) the Taxpayers' purchase price was not an arms-length transaction because it was an auction sale by a bank;
- 7) the lot is not a good wood lot because its highest and best use is as a residential waterfront lot;

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- 8) the Taxpayers failed to present evidence of loss in value due to location or other factors; and
- 9) the Property was fairly assessed.

The board's inspector reviewed the assessment-record card, reviewed the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the assessment was proper. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

Board Findings

Based on the evidence, the board finds the Taxpayers did not carry their burden of proof.

First, the Taxpayers' purchase was not a fair-market-value purchase because the seller was a bank. While there was no relationship between the Taxpayers and the bank, the bank is not your typical seller because a bank has dissimilar motivation from the typical home seller. Therefore, the sale cannot qualify as a market sale, and the Taxpayers did not present any evidence as to what adjustment would be required to equate the sale to the market value. Additionally, the Taxpayers did not submit any market data to show that their purchase price was consistent with nonbank sales during 1991.

Having found the Taxpayers' sale not to be a market sale, the

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Taxpayers did not present any credible evidence of the Property's fair market value. To carry their burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town.

See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986);

Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

Second, the board reviewed all of the information concerning the Property's attributes and detriments. Based on that review, the \$240,245 equalized value was consistent with the board's knowledge about lakefront properties. Further, to the extent this Property has any detriments, they are significantly outweighed by its major attributes, namely, size and waterfrontage. The Taxpayers' assertion that the lot could not even be a good wood lot demonstrated how the Taxpayers' other evidence concerning value could not be relied upon. Clearly, the highest and best use of this Property is as a residential lakefront property. While there may be some questions about whether this Property can support a septic system, the large lot provides a purchaser with options in terms of locating a system. Additionally, the lot did have an approved septic system for a four-bedroom house, which approval has since lapsed. This approval demonstrates, however, that there is a likelihood that this Property can support a septic system. As with all facts in this appeal, the burden is on the Taxpayers to show how the Town erred, and we find the Taxpayers did not present sufficient evidence to show that this

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Property could not support a septic system. The Swales engineer letter was insufficient to carry this burden because it was not a complete study of the entire Property and was prepared in a very summary fashion.

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The Town did an adequate job of addressing the Taxpayers' concerns.

In the future, the board would prefer to receive recent sales to support an assessment.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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(e). Filing a reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Howard F. and Joan W. Canning, Taxpayers; and Chairman, Selectmen of Moultonborough.

Dated: July 6, 1994

Melanie J. Ekstrom, Deputy Clerk

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ORDER

This order responds to the "Taxpayers'" rehearing motion, which is denied. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See 541:3.

The Taxpayers raised several issues, but none of them warrant rehearing. The board's decision was based on two major factors:

- 1) the Taxpayers' failure to present any market evidence; and
- 2) the board's judgment concerning the Property's value. The arguments raised by the Taxpayers in the rehearing motion do not show that the board erred in its decision. Attached to this order is the rehearing request anotated with letters. The following replies to the lettered arguments.

a) The board is required to review a taxpayer's entire estate within a town before it can grant an abatement. Town of Sunapee, 126 N.H. 214, 217 (1985).

The Taxpayers are incorrect when they assert it is irrelevant for the board to consider this information. We note that the Taxpayers did not present any

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evidence concerning the assessment on the nonappealed Property, and it is the board's standard practice to insert such information in all decisions where a taxpayer owns a nonappealed parcel.

b) The Taxpayers are incorrect. In a September 15, 1992 letter to the Taxpayers which the Taxpayers returned on October 14, 1992, the Taxpayers checked "Yes" to the following question: "ARE YOU WILLING TO HAVE THE BOARD OF TAX AND LAND APPEALS EXPEDITE ITS DECISION IN THIS CASE BASED ON WRITTEN BRIEFS AND/OR STATEMENTS SUBMITTED BY EACH PARTY, WITHOUT A HEARING?"

(Emphasis in the original.)

c) This is merely a recitation of the burden of proof, except where the Taxpayer has inserted "and located near a yacht club." The quoted language does not appear in the paragraph of the decision concerning the burden of proof. Moreover, the board certainly was aware that one of the Taxpayers' arguments concerned the Property's proximity to the yacht club, marina and bridge. The board, however, concluded the Taxpayers did not show how this location resulted in disproportionate assessment.

d) The information on the left side of the page is simply the board's recitation of the parties' arguments. Therefore, there is no need to respond to those matters since they were addressed in the decision.

e) This issue was sufficiently discussed in the decision. The bottom line is that the sale was not a fair-market sale.

f) The board simply disagrees with the Taxpayers' analysis and conclusion.

g) The board is required to consider what parties argue and state so the board

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can judge what weight to give particular arguments. When the Taxpayers asserted the Property was not even a good wood lot, it demonstrated to the board that the Taxpayers do not understand the Property's highest and best use.

h) The board reviewed the documentation submitted by the Taxpayers, and the decision addresses the board's conclusion on this point.

i) The h above.

The board notes that it did incorrectly refer to the White Mountain Design Group, Inc. letter as Swales letter, and this error is hereby corrected. However, it does not change the result.

Finally, the Taxpayers in their cover letter stated that an on-site evaluation should have been made. The board, after reviewing the significant information presented by the parties concluded no such inspection was required.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Howard F. and Joan W. Canning, Taxpayers; and Chairman, Selectmen of Moultonborough.

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Dated: August 4, 1994

Melanie J. Ekstrom, Deputy Clerk

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