

Judith M. Mastro January 1992 Revocable Trust

v.

Town of Holderness

Docket No.: 12784-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$272,914 (land \$120,000; current use \$3,114; buildings \$149,800) on a 46-acre lot with a house (the Property). The Taxpayer also owns, but did not appeal, a vacant, .02-acre lot assessed at \$18,700. The Taxpayer 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 Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) an appraiser estimated the Property's value, including the vacant lot, for

1990, 1991 and 1992 to be \$283,000, \$266,020 and \$250,000 respectively; and

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(2) the Property's assessment should be \$264,300 based on time trending the appraisal to April 1, 1990, the revaluation date.

The Town failed to submit a brief and was finally defaulted.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove overassessment.

The Taxpayer's evidence consisted of Mr. Conkling's July 20, 1992 letter in which he estimated that the Property and the nonappealed lot had a total 1992 value of \$250,000. Mr. Conkling then time adjusted that figure to April 1, 1990, the revaluation date. Based on this, the Taxpayer requested an abatement.

The key factor that the Taxpayer failed to address was the general level of assessment in the Town. Based on the department of revenue administration's assessment-to-sales study, the 1992 equalization ratio was 1.20. This means the assessments in the Town were generally 20% higher than the market values in the Town. Thus, to correctly compare Mr. Conkling's value opinion with the assessment, the assessment must be adjusted by the equalization ratio. This calculation yields a \$227,430 equalized value for the Property and a \$15,585 for the nonappealed lot, totaling \$243,015. This total equalized value was less than Mr. Conkling's \$250,000 value. Thus, the Taxpayer has not shown overassessment.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all

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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

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph Mastro, Agent for Judith M. Mastro January 1992 Revocable Trust, Taxpayer; and Chairman, Selectmen of Holderness.

Dated: January 17, 1995

Lynn M. Wheeler, Deputy Clerk

0006

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ORDER

This order relates to the "Taxpayer's" reconsideration motion. The motion failed to state any "good reason" or any issue of law or fact for granting reconsideration. See RSA 541:3. Therefore, the motion is denied.

The board reviewed this file to determine whether it had erred in how it considered the Property's full value compared to Property's full assessed value with considerations for current use. We apparently did err in this comparison but not in our ultimate decision. The proper comparison would be as follows.

Assessment

land NICU	\$149,832
waterfront land	\$ 18,700
building	<u>\$120,000</u>
	\$288,530 ÷ 1.20 = \$240,445 (equalized value)

Appraisal

cost approach	\$262,800
sales approach	\$250,000
final conclusion	\$250,000

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The correct comparison would be between the \$246,445 equalized value and the \$250,000 appraised value with some adjustment for the land in current use.

The appraiser, in his cost approach, valued the current-use land at \$22,500, which would result in a \$227,500 appraised value if the \$22,500 were deducted from the \$250,000 final conclusion. There is a question, however, about whether the appraiser concluded the current-use land contributed the \$22,500 value, which the appraiser used in his cost approach. See appraisal under "SITE COMMENTS" where the appraiser stated his opinions concerning why subdividing off land did not appear feasible.

The board decided to again review Mr. Conkling's appraisal. Mr. Conkling's appraisal was the basis of the Taxpayer's appeal. If the appraisal did not warrant reliance, then there would be no reason for a rehearing or revising the decision. This is what the board has ultimately decided here.

The board finds as follows.

1) The appraised values, i.e., the cost approach, the sales approach and the final value, were within a close range of the equalized assessment. The sales value and final value, with the \$22,500 deduction for the current-use land, were within \$12,945 or 5% of the equalized assessment (\$240,445 - \$227,500 = \$12,945). A 5% range of fair market value estimates is within reasonable limits. The cost approach exceeded the equalized assessment (\$262,800 cost approach versus \$240,445 equalized assessment).

2) We do not accept the appraiser's \$250,000 final value, with adjustments for the land in current use, for the following reasons.

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a) The appraiser did not use any waterfront sales in the comparative sales approach. While the Property's configuration and waterfront is somewhat unusual, the Property has frontage on Little Squam Lake, a class A waterbody. This factor is a key factor in the Property's value.

b) The board does not accept the appraiser's methodology of adjusting the comparables by his estimated site value from his cost approach and his estimated site value of the comparables.

For the above reasons, the board finds the ultimate decision of denying the appeal was correct.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Judith M. Mastro, Taxpayer; and Chairman, Selectmen of Holderness.

Date: March 14, 1995

Valerie B. Lanigan, Clerk

0006

March 31, 1995

Joseph L. Mastro
P.O. Box 603
Holderness, NH 03245

RE: Mastro v. Town of Holderness
Docket No.: 12784-92PT

Dear Mr. Mastro:

This letter responds to the "Taxpayer's" March 16, 1995 letter that stated the board erred in its rehearing order. The board's order did incorrectly designate land and building assessments on page 1, but the total assessment was correct.

The correction is as follows.

Land (NICU)*	\$120,000	(Lot 11)	(A)**
Land (Waterfront)	\$ 18,700	(Lot 11A)	(B)**
Building	<u>\$149,830</u>	(Rounded)	(C)**
	\$228,530		

*"NICU" means not in current use.

**See notes on attached cards.

The Taxpayer incorrectly asserted the assessment under appeal was \$383,432. The Taxpayer erred by adding in \$99,900 for the land in current use. See note D on cards. The \$99,900 assessment would have been the full-value assessment had that land not been in current use. However, the land was in current use and assessed as such. See card notes E. The board cannot review or reduce the full-value assessment because the Taxpayer was not taxed on that full-value assessment and thus was not aggrieved by the full-value assessment on that 44 acres. See RSA 76:16, 16-a ("person aggrieved" can appeal). This is why the board subtracted the value of the current-use land from both the assessment and the appraisal.

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Please note that we have not changed our rehearing order. This is simply a letter to clarify and correct. The Taxpayer's appeal deadline to the supreme court runs from the clerk's date on the rehearing order (March 14, 1995). Thus, the appeal, if any, must be filed within 30 days of March 14, 1995. See RSA 541:6; see also Petition of Ellis, 138 N.H. 159 (1983) (only one rehearing motion allowed). The board cannot take any further action on this appeal.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing letter has been mailed this date, postage prepaid, to Joseph L. Mastro, Trustee of the Judith M. Mastro January 1992 Revocable Trust, Taxpayer; and Chairman, Selectmen of Holderness.

Dated:

Lynn M. Wheeler, Deputy Clerk

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