

Robert and Cynthia Fullerton

v.

Town of Meredith

Docket Nos.: 14425-93PT and 15386-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 and 1994 assessments of \$399,700 (land \$272,700; buildings \$127,000) on a 1.07-acre lot with a house (the Property). For the reasons stated below, the appeals for abatement are granted.

The Taxpayers have the burden of showing the assessments were 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 carried their burden and proved disproportionality.

The Taxpayers argued the assessments were excessive because:

- (1) an appraisal as of May 1993 estimated the Property's market value at \$312,000;
- (2) waterfront properties on Lake Winnepesaukee are generally overassessed relative to non-waterfront properties based on a stratified sales study;
- (3) the Property has a market value of between \$310,000 and \$320,000;

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(4) the water is quite shallow along the frontage - 2 feet deep even out 30 feet from shore;

(5) the beach is man-made and often erodes into the lake requiring maintenance;

(6) other waterfront lots with more desirable waterfrontage are assessed for less; and

(7) an opinion of value by James Miller, a real estate broker, estimated a value range of \$310,000 - \$320,000 as of April 1995.

The Town recommended the assessment be revised to \$397,300 (land \$270,500; buildings \$126,800) due to the Property sharing its driveway with lot 5A. The Town also corrected the water frontage from 160 feet to 165 feet.

The Town argued the assessments were proper because:

(1) the site work associated with building and beach are factors that improve the value of the Property;

(2) the comparables used by the Taxpayers for their assessment comparisons have land factors other than frontage and size (access, neighborhood, abutting land use, etc.) that differ enough from the Property to justify their lower value;

(3) the Taxpayer's appraisal adjusted the comparables for time based on an assumption of a declining market, yet other appraisals (Munic. Exhibit - F) showed no time adjustment;

(4) the Towns ratios show a stable market during the 1992 and 1993 time period;

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(5) the appraisal was done for refinancing purposes and the appraiser took the conservative approach in correlating the indicated values of the comparables; and

(6) comparable #1 is the nearest in location, has the least gross and net adjustments and should be given the most weight.

Board's Rulings

Based on the evidence, we find the proper assessment should be \$386,600 (land \$259,800; buildings \$126,800).

In arriving at this assessed value, the board approached it from two directions. First, the board reviewed all factors submitted by the parties that could affect the assessment. Second, the board made a determination of market value of \$350,000 based on the Taxpayers' 1993 appraisal.

First, the board finds the factors of the shared driveway, the proximity to rental units and a condominiumized cabin colony and the lack of expansive water view compared to some of the comparables indicate that the condition factor should be reduced from 500 to 465 (resulting in an assessment of \$386,600). In reviewing the comparables submitted by the parties the board finds that these are factors the market would consider and should be considered by the Town in their assessment. See also Paras v. City of Portsmouth, 115 N.H. 63 (1975) (In arriving at the proper assessment the municipality should consider all factors affecting value.)

Second, the board finds the Taxpayers' appraiser did not give proper weight to comparable #1. The board agrees with the observations of the Town that comparable #1 is closest in proximity to the Property and had the least amount of net and gross adjustments. The appraiser's conclusion of \$312,000

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appears to have completely ignored comparable #1 and placed most weight on comparables #2 and #3. The board finds this is inappropriate given the proximity of comparable #1 and the minimal adjustments needed to make it comparable to the subject. In arriving at a market value estimate of \$350,000 we give significant

weight to comparable #1 along with some weight to comparable #3 and less to comparable #2.

In summary, the revised assessment of \$386,600 when equalized by the Town's 1993 ratio of 111% indicates a market value of \$348,300 - very similar to the board's market value conclusion analyzing the Taxpayers' appraisal.

The board places little weight on the Taxpayers' comparable assessments argument and sales ratio analyses. As the board stated from the bench, the proper basis for an individual assessment is market value. Once the market value has been found, the proper assessment is determined by applying the general level of assessment to that finding. See Appeal of Andrews, 136 N.H. 61 (1992).

The board was concerned that, based on the evidence presented in this case and the Department of Revenue Administration's 1994 ratios and coefficients of dispersion, the Town needs an assessment update. The Town, however, stated on the record that one was planned and underway for tax year 1996. The board commends the Town for initiating the update and anticipates its completion should help equalize the assessments.

If the taxes have been paid, the amount paid on the value in excess of \$386,600 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05,

unless the Town has undergone a general reassessment, the Town

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shall also refund any overpayment for 1994 and 1995. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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(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. 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

George Twigg, III, Chairman

Paul B. Franklin, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert and Cynthia Fullerton, Taxpayers; and Chairman, Selectmen of Meredith.

Dated: March 28, 1996

Valerie B. Lanigan, Clerk

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ORDER

On April 23, 1996 the Taxpayers filed a request for reconsideration. The Town subsequently filed an objection to the request on April 26, 1996. For the reasons that follow, the board denies the Taxpayers' request.

The basis for the Taxpayers' request is two fold: 1) an appraisal that estimated the Property's 1995 market value, prepared subsequent to the board's March 28, 1996 decision, indicates a lower market value than that found by the board; and 2) the board improperly placed too much weight on comparable #1 of the Taxpayers' 1993 appraisal.

Both these arguments are additional facts or new arguments that are generally precluded from being admitted in a rehearing motion. TAX 201.37 (e). (e) **Additional Facts or New arguments.** Parties shall submit all evidence and present all arguments at the hearing. Therefore, rehearing motions shall not be granted to consider evidence previously available to the moving party but not presented at the original hearing or to consider new arguments that could have been raised at the hearing. Except by Leave of the Board, Parties shall not submit new evidence with rehearing motions. Leave shall only be granted when the offering Party has shown the evidence was

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newly discovered and could not have been discovered with due diligence in time for the hearing and when the new evidence will assist the Board or where justice otherwise requires.

The board's rules were intended to create some finality to the hearing process before the board. If it did not exist, conceivably parties could have continual bites at the apple prolonging an appeal unnecessarily.

The Taxpayers' new appraisal obviously is new information that was not available at the time of the hearing and is not allowed under TAX 201.37. Also the

Taxpayers' lengthy description of why comparable #1 in their 1993 appraisal should not be given much weight was information that existed and could have been presented at the hearing but was not. The board found the appraiser's brief description that the sale appeared to be abnormally high for the market was not an adequate basis to disqualify the sale from consideration.

Generally, if the board denies a rehearing motion, an appeal to the supreme court must be filed within thirty (30) days from the date on the board's denial. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert and Cynthia Fullerton, Taxpayers; and Chairman, Selectmen of Meredith.

Date: May 3, 1996

Valerie B. Lanigan, Clerk