

Edward H. Shield

v.

Town of Holderness

Docket No.: 15781-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$235,600 (land \$82,500; buildings \$153,100) on a 1.0-acre lot with a commercial building (the Property). The Taxpayer also owns, but did not appeal, another lot in the Town with a \$122,800 assessment. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or was unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the ongoing litigation regarding easements to and encroachment of Kimbell

Marine Services significantly reduces the Property's value;

- (2) the Property should not be assessed for water influence or docks; and
- (3) a January 1996 appraisal estimated the market value to be \$27,000.

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The Town argued the assessment was proper because:

- (1) a reconstructed income analysis, considering the "cloud" on the title, indicates a value of \$138,400 or assessment of \$186,800; and
- (2) the Page appraised value was low because foreclosure sales were used in the market approach and no value was attributed to the basement area and water access.

Shortly after the hearing, the board viewed from the exterior the Property and the Kimbell Marina.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$110,950 (land \$56,250; buildings \$54,700). This assessment provides an indicated market value estimate of approximately \$82,000 by applying the Town's 1994 equalization ratio of 1.35 ($\$110,950 \div 1.35 = \$82,185$).

Two general questions were raised in this case: 1) were the rights of the abutting marina owned by Arthur Kimbell (Kimbell) to use a portion of the lower part of the lot for marina purposes improperly assessed to the Taxpayer; and 2) what is the proper market value estimate of the real estate rights owned by the Taxpayer on April 1, 1994.

Kimbell Easement

The board has determined that the Town did not assess the Taxpayer for waterfront access for use across the portion of the lot encumbered by the Kimbell easement. The board realizes this is contrary to the argument presented by the Taxpayer and the Town's assessing agent's, Mr. Blais, testimony that the Town had assessed Shield for Kimbell's easement rights. However, the board arrived at its conclusions by reviewing the assessment-record cards submitted by the Town of neighboring properties that front on Route 3, but do not have water frontage or access. It appears, based on this review, that in most cases the Town used a base rate of \$75,000 per half-acre site and that any adjustments by the condition factor to that base rate was multiplied against the unit price of \$75,000. (An example is Map 5A, Lot 84

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where the site value was calculated: .5 acre - \$75,000 unit price x .80 condition factor = \$60,000.) However, in assessing the Property, the Town used a base rate of \$150,000 (which normally would indicate water frontage or access) but adjusted it by both a condition factor and the lot size. (.5 acre x \$150,000 unit price x 1.00 condition factor = \$75,000). In short, the board finds that if the Town had applied the Route 3 road frontage methodology to the Taxpayer's Property, the land assessment would have been the same at \$75,000. Therefore, the board has concluded that the Town's methodology while at first glance appears to indicate water access, in reality does not.

The Kimbell easement area consumes approximately .4-acre of the Taxpayer's one-acre lot leaving approximately .6-acre effective land area unencumbered by the Kimbell easement. However, numerous other easements significantly affect the utility of the Taxpayer's remaining .6 acre including: driveway right-of-way easements for the benefit of the Kimbell

property, septic easements for the benefit of the Kimbell property and another adjoining property, well and water line easements, and view and tree cutting easements for property on the north side of Route 3. Further, the board finds that the area to the west of the Kimbell boat storage building and parking easement area had limited use and value to the land supporting the garage on Route 3 due to the topographical differences between these two areas of the lot. The board considered the limited effective use of the lot in revising the condition factor.

The Taxpayer and Kimbell reached a settlement dated May 1994 that established from that point forward certain rights the Taxpayer had to use a portion of the boat storage building and to access the water. However, based on the testimony at this hearing and the hearing in Docket No.: 16632-960S, the board concludes that the Taxpayer possibly had undefined waterfront rights, although they were minimal, that could be transferred with the Property.

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Based on the above findings, the board concludes the Town's condition factor should be reduced from 1 to .75 to reflect the diminished use and utility the easement and topography have on the remaining effective .6-acre lot. This results in a land assessment of \$56,250.

Market Value Evidence

The board gives no weight to the Taxpayer's appraisal performed by Stephen G. Page (Page Appraisal). While Mr. Page performed both a comparable sales and an income approach, he relied primarily on the comparable sales

approach in estimating a market value of \$27,000. The board was unable to give the appraisal any weight because the sales employed by Mr. Page were not arm's-length transactions, the comparable properties were significantly different than the Taxpayer's Property, and Mr. Page attributed no value to the lower level of the building. Mr. Page also reduced the comparable sales indicated value of \$43,000 for anticipated expenses of tank removal, retaining wall repair and masonry repair. The board was uncertain whether such expenses were warranted (Mr. Page was uncertain whether an underground storage tank was still in the ground.) or already accounted for in the adjustments made in the comparable sales approach. Finally, the board just did not find the conclusion of \$27,000 to be reasonable, notwithstanding all the issues with the Property, in light of the purchase Property's price in 1986 for \$135,000.

The board is very cognizant of the fact that the market in 1994 was significantly different than 1986. However such a drop in value seems to be of much greater magnitude than is reasonable.

However, based on the view of the Property, the photographs and the testimony, the board finds the building has significant limitations in use due to its condition and utility (poor layout and access by being built on a very steep bank) and due to the general seasonal market for any uses to which the Property is likely to be put. Consequently, based on the board experience and

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knowledge¹, the board has depreciated the Town's replacement cost new of the

¹ The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33 VI; Appeal of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53

building of \$218,735 by 50% physical and 50% functional to arrive at an indicated building assessment of \$54,700.

In short, the board finds the ordered assessment of \$110,950 (indicated market value of approximately \$82,000) to more adequately reflect the utility, topography, condition and easement issues with the Property than either the Town's original assessment or the Page appraisal.

If the taxes have been paid, the amount paid on the value in excess of \$110,950 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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.

(1993) (administrative board may use expertise and experience to evaluate evidence).

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Walter H. Mitchell, Esq., Counsel for Edward H. Shield, Taxpayer; and Chairman, Selectmen of Holderness.

Date: April 3, 1997

Valerie B. Lanigan, Clerk

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