

Herbert and Elizabeth Brown, Docket No.: 16585-95PT
Mary H. Perry, Docket No.: 16586-95PT
Roger O. and Miriam Uhler and Brian Uhler, Docket No.: 16588-95PT
George E. and Anne M. Levin, Docket No.: 16589-95PT
Louise Avent Eliason, Docket No.: 16598-95PT
Scott and Anne Pulsifer, Docket No.: 16599-95PT
Robert and Lili Young, Docket No.: 16600-95PT

v.

Town of Holderness

DECISION

Introduction

This decision addresses seven RSA 76:16-a appeals brought by the "Taxpayers." (The term "Taxpayers" will mean all taxpayers collectively. When referring to individual taxpayers, the board will use that taxpayer's last name.)

The board apologizes for the delay in releasing this decision. Given the value issues raised by the appeals, the board took some extra steps -- a view and involvement of the board's review appraiser -- which postponed the release of the decision.

The appeals address the 1995 assessments on the "Properties" listed in

the table on the next page.

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Taxpayer	Map/Lot #	Assessment	Property Description
Brown	2/53	\$ 286,000	86 acres with a summer cottage
Perry	3/48A	\$ 406,600	6.05 acres with a single-family home
Uhler	3/69	\$ 211,100	2.6 acres with 2 cottages
Levin	2/29	\$ 291,859	12.88 acres (10.88 acres in C.U.) with a single-family home
Eliason	2/51 2/51A 2/52	\$ 245,800 \$ 130 (CU) \$ 31,300	45 acres 1.5 acres .5 acre
Pulsifer	3/53	\$ 389,985	53 acres (51.50 acres in C.U.) with a single-family home
Young	3/49	\$ 343,800	13 acres with a single-family home

The Properties are on White Oak Pond. The appeals raised common issues of fact and law and were consolidated under TAX 201.21.

The board grants the abatement for Pulsifer and Eliason and denies abatements for the other Taxpayers.

Burden of Proof

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers 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,

each taxpayer must show that his/her assessment was higher than the general level of assessment in the municipality. Id.

Taxpayers' Arguments

The Taxpayers argued the assessments were excessive because:

- 1) the "Town's" \$150,000 assessment for the first acre was excessive and resulted in an excessive price per front foot;
- 2) the Town relied on only two sales to establish the benchmark land values, and these two sales were improved sales;
- 3) the first acre should have been assessed at \$100,000 based on the Conkling report;
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- 4) White Oak Pond is not deep and is marshy, weedy and rocky with a muddy bottom and sunken logs; and
- 5) boats on the lake are restricted to 7 1/2 maximum horsepower motors.

Town's Arguments

The Town argued the assessments were proper because:

- 1) the Taxpayers' assessments were revised as part of a town-wide reassessment update that included a sales analysis;
- 2) only two sales occurred on White Oak Pond, and those two sales were analyzed and used to set values on White Oak Pond; and
- 3) the Town analyzed the two sales, using the Taxpayers' asserted \$100,000 first-acre value, and that analysis demonstrated that the Taxpayers' \$100,000 benchmark did not capture the full value of the two sales (see calculations below).

Sale 1 -- Bresnahan to Hirsch

- ◆ This property sold in December 1993 for \$225,000

◆ Using Taxpayers' \$100,000 benchmark, results in a recalculated assessment of \$166,500, which would be 26% less than the purchase price. (Town ratio for 1995 was 1.01.)

Sale 2 -- Reardon to Knight

◆ This property sold in October 1994 for \$150,000

◆ Using the Taxpayers' \$100,000 benchmark, results in a recalculated assessment of \$110,900, which would be 26% less than the purchase price.

Board's Review Appraiser

After the hearing, the board viewed the Properties from the pond, and the board had its review appraiser examine the record, view the Properties and present a separate assessment analysis. That report was sent to the parties, and the parties were given an opportunity to comment on the report. The board then asked its appraiser to perform further research on the two White Oak Pond sales. His report on these sales is attached to this decision. Note: The review appraiser's report is not an appraisal. The board reviews the report

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and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the review appraiser's recommendation.

Board's Rulings

The board will first address the general arguments raised by the parties, and then the board will address the specific appeals as required.

Conkling Report

The Taxpayers' main argument was based on the Conkling appraisal analysis. While the Conkling analysis presented one expert's view of

valuation, the board has decided not to use that analysis in assessing these Properties for the following reasons.

1) The Town demonstrated that using the \$100,000 benchmark would have resulted in an underassessment of the two sales on White Oak Pond. Because the benchmark does not stand up to scrutiny when applied to the Hirsch and Knight properties, the board concludes the \$100,000 benchmark would not capture all of the land value.

2) While the report presented some interesting information, e.g., raised a good question about whether the Town's \$1,000 front-foot value was correct, there was insufficient information and analysis to overcome the flaw discussed in paragraph 1. We understand the difficulty of Mr. Conkling's assignment, but he simply did not present sufficient analysis, especially by not presenting a detailed comparison between the different water bodies. While it is true that White Oak Pond has certain detrimental factors, it is also true that this pond offers a unique waterfront experience. The waterfront is not intensely developed in most areas, and there is a 7 1/2 horsepower boat motor limitation. These factors, in conjunction with the pond's natural beauty, create a very peaceful environment that the market would recognize and pay for. The board admits that it is difficult to quantify how the market would factor in the attributes of this pond, but the Town's general methodology was a reasonable attempt to do so.

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3) The Conkling report ignored the two sales on White Oak Pond. This was a major error. A property's location on White Oak Pond is a key factor in creating value for such a property.

Because the board concludes the Taxpayers' major argument does not carry

their burden of proof, the board is unable to grant abatements for most of the Properties.

Additional Reason for Denial

There is a second reason for these denials. When the board reviews an assessment, it must look at the overall value of a property, i.e., the board must look at the land and the building as one package. The Taxpayers focused on the assessment methodology, but none of the Taxpayers presented information about the total value of their real estate. When buyers and sellers negotiate and conclude real estate transactions, they place a value on the total package. In tax abatement cases, the taxpayer has the burden to show what the entire property was worth, and this value is then compared to the equalized assessment. The board could not do this with any of the Properties because none of the Taxpayers presented any information about the total value of their real estate. As stated above, the board did extensive review and analysis of the Taxpayers' challenge to the assessment methodology, but the board could not conclude that that analysis in and of itself showed the Town erred.

Board Review Appraiser's Report

The board also extensively studied the board's review appraiser's report. The board: 1) agrees with the board's review appraiser (to be discussed fully below) that adjustments are warranted for Eliason and Pulsifer; 2) agrees no adjustment is warranted for Brown and Perry; 3) disagrees that adjustments are warranted for Uhler, Young, or Levin.

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Uhler

Concerning Uhler, the board disagrees that an additional -10% is warranted for the buildings on the Uhler property. The board agrees with the Town's assertion that the assessment already included an adjustment for the location near the hotel.

Young

Concerning Young, the board disagrees with the appraiser's adjustment for two reasons: 1) the board is reluctant to use the Levin assessment comparison, especially when Levin presented information in response to the appraiser's report that questioned the quality of the Levin lot; and 2) as the Town stated in its response letter, the Hirsch property sold for \$225,000 for only .47 acres and an inferior house to the Young house. Given the overall quality of the Young property and the lack of any value information on its value as a whole, the board does not find an adjustment is warranted.

Pulsifer

Concerning the Pulsifer property, the board finds the proper assessment to be \$262,485 (land \$193,885; building \$68,600). While the Pulsifer appeal suffers from the same problems as the other Taxpayers' appeals, Pulsifer also raised a separate methodology question concerning the Town's calculation of the land assessment in view of a substantial amount of this land being in current use. The Town in calculating the condition factor, used a 1.4 factor for the additional waterfrontage owned by Pulsifer that was in current use. The Town argued that this additional waterfrontage would increase the value of the not-in-current-use (NICU) property and this value should be captured. The board does not disagree that the current-use frontage adds some value to the NICU land, but the board strongly disagrees with the extent to which the Town

added value. The board concludes that 300 feet on both side of the NICU

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frontage should be added in the condition factor. The board does not think that any more is necessary given the general solitude on the lake. Using the additional 300 feet on both sides results in the following calculations.

Amount of Frontage

240 feet NICU
300 feet buffer (CU land)
300 feet buffer (CU land)
840 feet

840 feet results in +.70 factor

Land Assessment

$\$150,000 \times 1.0 \times 1.4^* = \$210,000$

$*(1 + .70 \text{ XWF} - .10 \text{ MDT} - .30 \text{ ACC} + .10 \text{ GUU} = 1.20)$

NICU land	\$210,000
NICU land	\$ 900
CU land	<u>\$ 5,485</u>
	\$216,385

buildings	<u>\$ 68,600</u>
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Total Assessment	\$284,985
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We note that the board review appraiser agreed that an adjustment was warranted for Pulsifer, and while the board considered this, the board independently calculated its assessment for Pulsifer.

Eliason

Concerning Eliason, the board finds the proper assessment to be \$170,800

on map 2, lot 51. The board makes no adjustment to lot 51a or lot 52. Therefore, for purposes of calculating a refund, any value in excess of \$240,400 should be refunded (revised lot 51 assessment \$170,800, 51a assessment \$38,800, plus lot 512 assessment \$31,300).

The board concludes that until record access is established, this property has substantially limited value. Certainly, it has some value as a single lot, but it has no subdivision value. The unique thing about the access problem is that to obtain access would require crossing two properties.

Eliason presented sufficient evidence that she had hired lawyers to review ways to establish legal access, but these efforts were unsuccessful.

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Additionally, Eliason stated that she had spoken with the property owners over whose property access would be required, and neither of the property owners would sell access. Given the legal work and the attempts to purchase, an informed purchaser of the Eliason property would conclude that it will be difficult, if even possible, to obtain access. The board reviewed the access adjustment on other cards, which showed the following access adjustments.

<u>Eliason</u>	-50
<u>Brown</u>	-50
<u>Pulsifer</u>	-30
<u>Young</u>	-20

The board decides, given Eliason's burden of proof, that a -100 access adjustment is appropriate. The board admits that this adjustment is not based on specific value information, but the board is confident that the lack of access would substantially diminish the property's value. The board has not adopted the review appraiser's assessment conclusion because Eliason does have the burden. If Eliason had wanted a lower assessment than we have ordered,

Eliason could have hired an appraiser to provide better market information.

The revised land calculation is as follows.

1.00 ac x 150,000 x 1.00 x .75* = \$112,500

*(100 + .95 x WF - 100 ACC - .20 UND = 75)

1 ac	\$112,500
44 ac	<u>\$ 58,300</u>
	\$170,800

Refund

For Pulsifer and Eliason, the following refund paragraph applies. If the taxes have been paid for the tax year 1995, the amount paid on the value in excess of \$284,985 for Pulsifer and \$240,400 for Eliason 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 shall also refund any overpayment for 1996 and 1997. Until the Town undergoes a general reassessment, the Town shall use the ordered assessments for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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Rehearing

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

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to George Levin, Representative for Herbert & Elizabeth Brown and Robert & Lili Young, Taxpayers; Kevin Frank, Representative for Mary H. Perry, Taxpayer; Roger O., Miriam & Brian Uhler, Taxpayers; George E. & Anne M. Levin, Taxpayers; Louise Avent Eliason, Taxpayer; Scott & Anne Pulsifer, Taxpayers; and Chairman, Board of Selectmen of Holderness.

Date: January 30, 1998

Valerie B. Lanigan, Clerk