

Mark Thomas Ball

v.

Town of Wakefield

Docket No.: 16703-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$47,300 on a vacant, 1.08-acre lot (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or 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 Property has been on the market for two and one-half years with the most recent listing of \$29,900 and only one offer of \$20,000 has been made;
- (2) the Property sits in a small weedy cove on Balch Pond which has a

precipitous drop at the water's edge;

- (3) the lot is unattractive and has no view; and
- (4) a nearby lot, Lot 124, has been on the market for several years.

The Town argued the assessment was proper because:

- (1) the Town analyzed all waterfront sales from October 1996 to June 1998;

this analysis indicates waterfront property is proportionately assessed;

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- (2) there are very few arm's-length sales on Balch Pond;
- (3) the Town reviewed the assessments of all the surrounding properties (including 2 improved properties); and
- (4) the Property has been uniformly, reasonably and fairly assessed.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$30,400. In summary, this finding is based on an estimate of the Property's market value of approximately \$30,000 and a revision of the various factors on the assessment-record card to reflect the physical characteristics of the Property and its location.

The board recognizes the Town's position in wanting to maintain the original market judgements made during the last reassessment in 1988. However, maintaining such a system does not necessarily ensure proportionality as required by Part 2, Art. 5 of the New Hampshire Constitution.

Proportionality is met by having assessments relative to market value (RSA 75:1) and periodically reviewing assessments to ensure they reflect market value (RSA 75:8). In Appeal of Andrews, 136 N.H. 61 (1992), the court held that assessment proportionality is determined by estimating market value and relating it to a town-wide general level of assessment as opposed to some

level of assessment for a specific class of property. Consequently, when the board is faced, as it is in this case, with market evidence that the assessment is excessive and the Town is at a 102% level of assessment, an abatement must be ordered.

The board finds the Taxpayer's marketing attempts of the Property over the past two and one-half years is some evidence of the Property's potential market value. The Taxpayer testified that the Property had initially been listed at \$44,000, dropped after six months to \$34,000 and after another six months dropped to the current asking price of \$29,900. The only offer received was a \$20,000 offer from an individual within the realtor's office. This reasonable market exposure along with the fact that the Property appears

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to be buildable (a percolation test has been conducted and there are improved properties on either side of the Property) is a good indication that the assessed value is excessive relative to the Property's market value. While the Property has not sold at the current asking price of \$29,900, the board finds no other evidence to have the assessment any lower. It is difficult to believe that a buildable lakefront lot, despite the topography, cove and weed issues mentioned by the Taxpayer, would have a value much less than the current asking price.

As testified to by both the Town and the Taxpayer, sales of properties on Balch Lake are nearly nonexistent. The one sale on Balch Lake was of a right of way; however, neither of the parties knew any details of the property or sale. However, the asking prices of four properties on Balch Lake (Taxpayer's exhibit #1) do indicate a general market value range lower than

the Town's assessment (\$29,900 - \$44,900).

Consequently, given the market exposure of the Property, the other asking prices and the steep topography, cove location and weedy waterfront, the board concludes that an adjustment to the assessment is warranted. The board understands the Town's concerns that an adjustment ordered for one property may have a ripple effect on other similarly situated properties. However, as stated earlier, every taxpayer is entitled to be properly assessed relative to market value and the town-wide level of assessment, not just to similar properties. Further, the board would note that perhaps the time elapsed since the last reassessment in 1988 explains in part why the factors that were appropriate then may not be in 1996. The Town did state that it was investigating options for performing a reassessment update. The board would encourage the Town to seriously pursue those options as it appears, at least from the evidence in this case, that an update may be in order. Without performing the market review that a reassessment or update would involve, it is not possible for the board to definitively say which factors on the assessment-record card need to be adjusted. However, given the factors

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available (topography, undeveloped, road condition and cove location) the board has chosen to reduce the topography to .70 and the cove factor to .70 to recognize the physical features of the Property. These revisions lead to a revised assessment of \$30,400 which is in line with the board's general estimate of market value of approximately \$30,000 and the Town's equalization ratio of 1.02.

If the taxes have been paid for the tax year 1996, the amount paid on

the value in excess of \$30,400 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 1997. 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

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 Mark Thomas Ball, Taxpayer; and Chairman, Selectmen of Wakefield.

Date: June 23, 1998

Valerie B. Lanigan, Clerk

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