

Thomas M. and Dorothy J. Meehan

v.

Town of Moultonborough

Docket No.: 16849-96PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1996 adjusted assessment of \$226,700 (land \$177,600; buildings \$49,100) on a .40-acre lot with a single-family home (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was 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, the Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) they purchased the Property with some interior furnishings in 1985 for \$120,000;

(2) the curve of the shoreline makes the effective frontage significantly smaller than the actual frontage;

(3) the swimming area is muddy and mucky to within a few feet of the shore and there is no sandy beach area;

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(4) the Property does not have a well. Bottled water is brought in for drinking and cooking and lake water is used for all other water needs; and

(5) the correct assessment should be \$175,000.

The Town argued the assessment was proper because:

(1) the Taxpayer provided no evidence of market value for the Property.

Board's Rulings

Based on the evidence, the board finds the correct assessment should be \$208,900.

The Taxpayers presented evidence at the hearing that showed the condition of the shoreline and beach area. Although the Property has approximately 110 feet of actual shoreline, the curve of the shoreline, makes the effective usable frontage approximately 65 feet. The fact that the Property is in a cove, the shallowness of the water as you enter the lake and the presence of a seasonable brook emptying from the Property onto the beach area and into the lake causes the swimming area to be less desirable than a typical waterfront lot in the neighborhood. The lake bottom is muddy and mucky and unpleasant to stand in within a few feet of the shoreline and people entering the water for swimming typically go in off the end of the dock where the water is deeper. For these reasons, the board finds it appropriate to

make a nominal adjustment to the site value to more accurately reflect the condition of the shoreline. Although this Property was assessed during the revaluation according to the standard methodology used on other properties within the municipality, it is appropriate to make a site-specific adjustment in this case to more accurately reflect the condition of the Property. The board has made a negative .10 adjustment to the condition factor for the site and the Town may place the adjustment in an appropriate category. The negative .10 adjustment results in a revised site value of \$159,800 (\$159,840 rounded). This new site value then added to the previous building value of \$49,100 brings the total assessed value for the Property to \$208,900.

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If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$208,900 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

Douglas S. Ricard, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas M. and Dorothy J. Meehan, Taxpayers; Mary E. Pinkham-Langer, Agent for the Town of Moultonborough; and Chairman, Selectmen of Moultonborough.

Date: October 21, 1998

Valerie B. Lanigan, Clerk

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