

Thad G. and Carolyn Long

v.

Town of Moultonborough

Docket No.: 16864-96PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$320,900 (land \$250,000; buildings \$70,900) on a .80-acre lot with a single-family home (the Property). For the reasons stated below, the appeal for abatement is denied.

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 failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

(1) an appraisal as of December 1996 estimated the Property's market value at \$285,000;

(2) the appraiser inspected two of the comparables and found comparable four to be most similar; and

(3) the Town's \$250,000 land value is on the high end and exceeds the land value indicated by the Eagle Shore Road sale of \$165,000 in December 1996.

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The Town argued the assessment was proper because:

(1) the sales reviewed during the general reassessment in 1996 indicated the Property was located in the #1 water neighborhood area with a base site value of \$250,000;

(2) the comparables contained in the Taxpayers' appraisal are, with the exception of one, in inferior neighborhoods with no adjustment for location;

(3) some of the building adjustments, especially for basement and basement finish, are inadequate; and

(5) the Eagle Shore Road sale for \$165,000 was of a subdivided lot that required fill before construction and had limitations of dock placement due to wetlands.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not carry their burden in proving disproportionate assessment. The primary evidence submitted was the appraisal prepared for the appeal which estimated market value at \$285,000. The board agrees with the Town's review and rebuttal of the appraisal's comparables that many of the comparables are in inferior locations and would require a locational adjustment to be comparable to the Property. The Property is located on "First Neck" and has direct access to the main body

of Lake Winnepesaukee. The Taxpayers' comparables are either in cove locations or in more congested or shallow areas of the lake, areas which the Town found during the reassessment warranted lower land values. The third comparable on Black Cat Island, while in a similar neighborhood as the Property, is only .3 of an acre in size as opposed to the Property's .8 acre size. The Town's assessments differed by approximately \$40,000 based solely on the size of these two lots. However, the appraiser made no adjustments for the size of the lot.

Further, the Eagle Shore Road sale is not comparable to the Property's lot because of its undeveloped state and the fill required before construction would be possible.

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Consequently, for all these reasons, the appraisal does not carry the Taxpayers' burden. Also, the Town adequately rebutted the appraisal and supported the assessment with the submitted sale data.

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

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to William Philpot, Jr., Esq., Counsel for Thad G. and Carolyn Long, Taxpayers; Mary E. Pinkham-Langer, Agent for the Town of Moultonborough; and Chairman, Selectmen of Moultonborough.

Date: October 1, 1998

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Taxpayers'" October 30, 1998 motion for reconsideration (Motion) which is denied.

The board's October 1, 1998 decision adequately addresses why the Taxpayers' appraisal failed to carry the Taxpayers' burden in proving the property was disproportionately assessed.

The Taxpayers, however, raise an argument in the Motion that an abatement is warranted due to the "Town's" methodology of having no incremental difference in value for any lots between one-half acre and one acre in size. (The Town assessed half-acre waterfront sites at \$250,000 and did not increase the site value until the lot exceeded one acre in size.) The board finds this argument also does not carry the Taxpayers' burden. Even if one were to find that the Town's methodology is flawed, the Taxpayers did not show that they are injured by that methodology. The Taxpayers' lot is .8 acres and did not receive any incremental value over the one-half acre,

\$250,000 base value established by the Town.

Consequently, the board finds no basis in the original record or in the Motion to grant a reconsideration.

To appeal this matter, an appeal must be filed with the supreme court within thirty (30) days of the clerk's date below. RSA 541:6.

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Date: November 17, 1998

Valerie B. Lanigan, Clerk

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