

Rex E. and Mary L. Atwood, Docket No. 16947-96PT
Teresa A. Wetzler-Finn, Docket No. 16978-96PT
Thomas D. and Ann M. Walsh, Docket No. 16980-96PT
Saltzberg Children's Asset Trust, Docket No. 16981-96PT
Marie J. Salipante, Docket No. 16982-96PT
Thomas T. and Carol A. Rayner, Docket No. 16983-96PT
David L. and Christine E. Pearse, Docket No. 16984-96PT
Stephen and Karen Morris, Docket No. 16985-96PT
Howard and Karen Hardy, Docket No. 16987-96PT
JNJ Hecker and RNK Turner, Docket No. 16988-96PT
Michael F. and Sharyl A. Galvin, Docket No. 16990-96PT
Ronald G. and Christine S. Dean, Docket No. 16992-96PT
Roger and Rosaria Crawford, Docket No. 16993-96PT
Dennis A. and Carol A. Colameta, Docket No. 16994-96PT
Carlene A. and Michael J. Gagnon, Docket No. 16995-96PT
Mark E. Reingold, Docket No. 16997-96PT
Robert J. and Katherine H. Lewis, Docket No. 17194-96PT

v.

Town of Moultonborough

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1996 assessments of \$18,000 per dock located at Far Echo Harbor. For the reasons stated below, the appeals for abatement are granted.

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,

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.

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The Taxpayers argued the assessments were excessive because:

- (1) only owners of property at Far Echo Harbor can own a dock; there are 101 lots (85 developed) and 50 docks; there is a sufficient number of docks to fulfill the demand;
- (2) there is a 21-foot restriction on the size of boat allowed at the docks;
- (3) the docks have no amenities; there is no parking, bathroom facilities, boat launch, gas, electricity or water;
- (4) the only recent sale of a slip was in December 1996 for \$10,000 (Kelleher); and
- (5) an April 1996 summary appraisal estimated a \$10,000 value per slip.

The Town argued the assessments were proper because:

- (1) the Town was revalued in 1996, and all sales in the Town from 1994 through 1995 were studied;
- (2) sales of docks in other developments supported the value assigned to the Far Echo Harbor docks;
- (3) two sales of developed lots at Far Echo Harbor supported the dock assessment when the value for the site and other improvements are subtracted from the sales prices; and
- (4) there is a premium value to these docks because there are more lots than

docks.

Board's Rulings

Based on the evidence and arguments presented to the board, the board finds each dock should be assessed at \$13,500.

Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence). Oftentimes, the evidence and
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the arguments clearly point to a specific value amount. Othertimes, the evidence is not so clear, and the board must rely upon its judgement in weighing the evidence and in arriving at a value. This case falls into the latter category.

Initially, we note that the Town demonstrated that it had performed substantial study and analysis in conducting the 1996 revaluation. Specifically, the Town made a reasonable effort to assess the docks. However, given the lack of dock-only sales at Far Echo Harbor, the Town was left with a judgement decision about what specific assessments to place on these docks. In making that decision, the Town looked at dock sales throughout the Town and then made a judgement concerning the docks here. While the board understands the Town's judgement, the board, ultimately, does not agree with the Town's assessment conclusion.

The driving force behind these abatements is the Taxpayers' credible

arguments that the docks were overassessed. Specifically, the board finds the following arguments warrant an assessment reduction.

1) The dock market within Far Echo Harbor is closed. Docks may only be owned by people who also own a lot in the development. This compares to some of the other marinas where docks could be owned by anyone, and therefore, the market for such docks was substantially larger.

2) Some of the marinas with dock sales were affiliated with developments with substantially higher-priced homes, and thus, one would expect the dock prices in such developments to also be higher. The Taxpayers demonstrated that the properties within Far Echo Harbor sold for approximately \$80,000 to \$150,000, with most selling for \$80,000 to \$125,000. In contrast, the Jonathan Landing properties sold for \$150,000 to \$250,000, and the Windward properties sold for \$250,000 to \$350,000. Given the lower value for the houses in Far Echo, it is reasonable to assume that lower values would also be obtainable for the docks.

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3) There are no amenities associated with the Far Echo Harbor docks. There is no parking, no bathroom and no electrical service, except for the warning lights and bubblers. In contrast, some of the other marinas had substantially more amenities, and these amenities would generally be reflected in higher dock prices.

Given the arguments presented by the Taxpayers, the board concludes an assessment reduction is warranted.

Nonetheless, the board does not find the Taxpayers' \$10,000 value. The board is reluctant to base numerous assessments on only one dock sale within

Far Echo Harbor. As the parties are well aware, one sale does not establish a market. The board, therefore, examined the other dock sales that were presented and concluded that the Quayside sales were the most appropriate values from which to begin the analysis. Quayside was selected primarily because of its proximity to Far Echo Harbor and because, based on the Town's assessment review, the sales established a \$15,000 dock value at Quayside (for similar sized docks). The board then accepted the Taxpayers' argument that an adjustment was warranted to the Quayside sales given the arguments discussed above. Therefore, the board made a minus 10% adjustment to the \$15,000 Quayside dock value, arriving at the \$13,500 value that is the conclusion of this decision. The board finds this \$13,500 assessment is a reasonable value given the various factors and arguments that were presented by both sides.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$13,500 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 and 1998. 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.

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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

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Barbara F. Loughman, Esq., counsel for the Taxpayers; Mary Pinkham-Langer, representative for the Town; and Chairman, Selectmen of Moultonborough.

Date: January 15, 1999

Valerie B. Lanigan, Clerk

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v.

Town of Moultonborough

ORDER

This order responds to the "Town's" Motion for Declaratory Judgement of June 6, 1998 (Motion) which the board dismisses.

This dismissal is based on the information submitted with the Motion, the "Taxpayers'" June 22, 1998 objection to the motion and the board's telephone conference with the parties on June 29, 1998.

As indicated at the conclusion of the telephone conference, the board

does not have jurisdiction to determine title of real estate or to quiet title. The board does have the responsibility, however, in determining the market value of real estate (RSA 75:1) to consider all factors that may affect the market value, including any clouds on title. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) (In arriving at an assessment, all relevant factors must be considered). However, during the telephone conference, both parties agreed that the issues

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raised in the Motion relative to ownership of the docks would not be a factor argued in establishing the market value of the docks.

The board will continue to process the appeals and schedule them for hearing in due course.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Barbara F. Loughman, Esq., counsel for the

Taxpayers; Mary Pinkham-Langer, representative for the Town; and Chairman,
Selectmen of Moultonborough.

Date: July 2, 1998

Valerie B. Lanigan, Clerk

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ORDER

This order relates to the following motions:

"Town's" December 28, 1998 "Motion for Leave" (to submit more than 10 comparables);

"Taxpayers'" December 30, 1998 "Motion to Exclude"; and

Town's December 30, 1998 "Request for Relief From Failure to Comply With a Rule."

Following a December 31, 1998 telephone conference with the parties, the parties reached the following stipulations, which rendered the above motions moot.

1) The only issue to be decided at the hearing will be the value of docks. The Town stated that its review of house and lot sales within the Far Echo Harbor development demonstrated that the Taxpayers' other properties were properly

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assessed. Therefore, for purposes of reviewing the Taxpayers' entire estate, the board will assume the Taxpayers' other properties within the Town were properly assessed.

2) The Taxpayer waived the Town's noncompliance with the 14-day rule, TAX 201.33, but the Town will be limited to the dock comparables.

3) The Town will deliver the comparable assessment-record cards to the Taxpayers no later than Monday, January 4, 1999.

4) The board will assume the Taxpayers own the docks in fee simple. The board will not, therefore, accept evidence or argument on the title issue.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Concurred, unavailable for signature
Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Barbara F. Loughman, Esq., counsel for the Taxpayers; Mary Pinkham-Langer, representative for the Town; and Chairman, Selectmen of Moultonborough.

Date: December 31, 1998

Valerie B. Lanigan, Clerk

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