

Ialeggio Family Trust  
v.  
Town of Ossipee  
Docket No.: 17041-96PT

Clayton M. Merrick  
v.  
Town of Ossipee  
Docket No.: 17042-96PT

Carol L. Brown and Eugene W. Giromini  
v.  
Town of Ossipee  
Docket No.: 17043-96PT

Gail E. Merrow  
v.  
Town of Ossipee  
Docket No.: 17044-96PT

Joan C. Picard  
v.  
Town of Ossipee  
Docket No.: 17045-96PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1996 assessments of the following:

Ialeggio - \$79,200 (land \$39,000; buildings \$40,200) on "Lot

37/1", a .115-acre lot with a seasonal cottage;

Merrick - \$80,100 (land \$40,400; buildings \$39,700) on "Lot 35/41-2", a .142-acre lot with a cottage; and \$35,500 on "Lot 35/51-2", a vacant .163-acre lot;

Brown - \$139,100 (land \$66,600; buildings \$72,500) on "Lot 35/34", a .551-acre lot with two seasonal cottages; and \$30,900 on "Lot 35/35", a vacant .39-acre lot;

Page 2  
Ialeggio Family Trust, et al. v. Town of Ossipee  
Docket No.: 17041-96PT et al.

Merrow - \$96,600 (land \$46,800; buildings \$49,800) on "Lot 35/43", a .23-acre lot with a seasonal cottage;

Picard - \$156,700 (land \$53,000; buildings \$103,700) on "Lot 34/40", a .344-acre lot with two seasonal cottages;

(the Properties). For the reasons stated below, the appeals for abatement are granted with respect to the Ialeggio Family Trust, Merrick, Brown and Merrow properties and denied with respect to the Picard property.

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 Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id.

The Taxpayers generally argued the assessments were excessive because:

- (1) by quitclaim deed dated September 9, 1993, the 1,390 foot beach area was deeded to the Deer Cove Shorefront Owners Association, Inc. (DCSOA) for \$29 a foot;
- (2) by permanent stipulation in July 1996, the DCSOA and the Town of Ossipee

agreed that the lots benefiting from the above easement would be taxed as "water access" lots;

(3) the Town's addition of water access to the properties was discriminatory and the amount exceeded the previous assessed value and the prorated amount for the association's share of the waterfront;

(4) water access properties with docks have been assessed the same as water access properties which have been denied dock facilities; and

(5) a Class V road separates the Properties from the water.

Page 3

Ialeggio Family Trust, et al. v. Town of Ossipee  
Docket No.: 17041-96PT et al.

Further, the Taxpayers individually argued their assessments were excessive because:

(1) Ialeggio: the shore frontage is only 50 feet and the lot is encumbered by two water access easements; there is a steep embankment to the beach level; the property has been denied dock facilities by the Department of Environmental Services (DES);

(2) Merrick: Lot 41-2 is an undersized grandfathered lot and its size and Town setbacks limit its use; dock facilities have been denied; the lots slope from back to front; rocks in the water limit its use;

(3) Brown: the Town has assessed the lots incorrectly - Lot 35/34 is a rear lot that has no deeded water access, Lot 35/35 fronts entirely on Deer Cove

Road; the lots have been built to capacity and would most probably be sold together; the two cottages are in poor condition; the topography is steep; the beach erosion is extreme; dock facilities have been denied;

(4) Merrow: the water frontage is only 50 feet wide; easements behind and beside encumber the lot; two cottages have shared the stairs through the years; the lot has a steep embankment; dock facilities have been denied; and

(5) Picard: the house is poorly heated and lacks insulation, has a wet basement and an unfinished second floor.

The Town argued the assessments were proper because:

(1) the Taxpayers have presented no evidence of market value;

(2) the assessment calculations were not based on water frontage but were based on lot size;

(3) when the Properties' assessments were changed to reflect a value for the water access (per stipulation), no area of land was added to the size of the parcels;

(4) only one sale (Lot 35/36) occurred in the neighborhood subsequent to the changed values; and

(5) the assessments are consistently applied when compared to other neighborhood properties.

Page 4

Ialeggio Family Trust, et al. v. Town of Ossipee  
Docket No.: 17041-96PT et al.

### **Board's Rulings**

#### History of Appeals

These appeals were triggered by the Town's revision of the Taxpayers' assessments in 1996 due to the agreement contained in the "permanent stipulations" between Deer Cove Shorefront Owners Association, Inc. (DCSOA)

and the Town of Ossipee in July 1996 that DCSOA was not liable for taxes on the narrow shore property and that various individual lot owners would have their taxes "adjusted accordingly and proportional to similarly situated properties in the Town of Ossipee." The Taxpayers presented both macro and micro arguments as to why the increases in assessments were excessive. As listed in the Taxpayers' arguments, the Taxpayers' macro argument dealt primarily with the title issues surrounding the narrow shorefront parcel now owned by DCSOA and the Town's assessment methodology employed in revising the assessments in 1996. In general terms, the Taxpayers micro arguments dealt with their specific properties (eg. rocks in water, steep topography, lack of docks, small size lot; heating systems, lack of full basements, unfinished areas, etc.).

During the hearing, the Town ("Mr. Lessard") indicated that he had not had adequate time to review the Taxpayers' arguments. Consequently, the board ordered (July 1, 1998) the Town to review the assessment methodology applied to the appealed Properties analyzing any comparable market data that might be available and file a report with the board. This report was filed with the board on September 15, 1998. As provided in the July 1, 1998 order, the Taxpayers filed a response on September 24, 1998 which included a paragraph by paragraph response to the Town's report, some market analyses by real estate brokers and copies of letters from the several Taxpayers to the Town about their property.

During deliberations, the board has extensively reviewed the evidence submitted at hearing, the Town's subsequent report and the Taxpayers' comments. To further assist the deliberations, the board, on its own, viewed

on October 6, 1998 the exterior of the Properties, the shore front and other non-appealed properties in the neighborhood that were referenced as comparables by the parties. Also, during review of the evidence, the board was uncertain as to the legal status of various docks associated with the appealed Properties. The board asked its review appraiser (Mr. Bartlett) to research DES files and summarize his findings in a report. Mr. Bartlett filed his report on October 27, 1998 with copies being sent to the parties with an opportunity for them to comment. No comments were filed by the parties.

#### Board's Findings

First, on the Taxpayers' macro arguments, the board finds the process the Town undertook in revising the assessments appears reasonable. At the time the Town revised the assessments, no sales existed of properties with similar locations, easements, road rights-of-way, etc. The resulting condition factors are appropriate for the rights the appealed properties have when compared to other properties having either greater or lesser rights to the lake. Because there is not extensive direct market data by which to determine whether the resulting assessments are proportional to market, the board's focus in reviewing the Town's methodology is whether it is consistent with that in other areas of the lake where there was market data. Mr. Lessard's September 15, 1998 report ("report") focused on this type of relative analysis of neighborhoods. His analysis indicates the adjustments that were made in 1996 appear to take into account many of the general concerns raised by the Taxpayers such as the non-exclusive waterfront usage, town road between cottages and shore, and the Makin/Amirault prescriptive easement litigation. The board also reviewed the assessments and condition factors on nearby properties and on its view compared the desirability of the Properties with other non-appealed properties along Deer Cove Road. Based on

this review, the board finds the Town's assessments to be generally proportional (with the exceptions found later in this decision) to the

Page 6

Ialeggio Family Trust, et al. v. Town of Ossipee  
Docket No.: 17041-96PT et al.

assessments of other properties in the neighborhood considering the various factors testified to by the Taxpayers.

Also, on the view, the board reviewed the sale of a similar property that occurred subsequent to the assessment revision (July 1997 sale of Map 35, Lot 36 for \$190,000). The property consists of a year round dwelling and a seasonal cottage on a .367-acre lot in the same neighborhood as the Properties. The Taxpayers testified that the sale also included personal property (furniture, boat, etc.). While the value of the personal property was uncertain, even if a significant adjustment is made to the sales price, the Town's assessment of \$149,300 (which reflects the same assessment methodology as applied to the Properties) appears reasonable. While certainly one sale does not totally define the market, the board finds this sale is some affirmation of the Town's general assessment methodology.

Further, the board finds it is not unreasonable that the total of the increase in assessments of the properties benefited by the DCSEA purchase of the shorefront parcel exceeds the purchase price. First, the shore parcel was at the time of the purchase significantly encumbered with usage by the adjoining lots. Second, it is a common market phenomenon that when property rights are legally subdivided (eg. lot subdivision, shared interest in common areas in condominium ownership, etc.), the resulting value enhancement to the benefitted parcels is usually greater than the value of the property before the subdivision of property rights.

On the view, the board reviewed the parties' micro arguments. The board compared the assessment cards with the issues raised by the Taxpayers relative to their lots and cottages. We do not find that any of the topographical issues with the land or physical features of the buildings warrant any additional adjustment (with the exception of the Brown lots). The buildings' base rates and depreciation on the assessment-record cards adequately account for the various "seasonal cottage" attributes of the buildings. Generally, the board found the buildings to be in average to above average condition and

Page 7

Ialeggio Family Trust, et al. v. Town of Ossipee  
Docket No.: 17041-96PT et al.

the lots to be pleasant, functional and having good access to and being opposite a generally sandy beach water front.

The board does find, however, that the legal uncertainty of several of the Properties as to their right to construct a dock is a factor that would be generally recognized in the market. As of tax year 1996, DES was still in the process of trying to identify which of the lots had grandfathered lots on the DCSSOA's shorefront parcel. Based on the June 24, 1996 DES letter attached to Mr. Bartlett's report, only the Picard property and the Brown property had been tentatively determined to have grandfathered docks. The balance of the appealed Properties had been determined to have no grandfathered docks. No market evidence was submitted as to the market effect of the uncertainty of having a dock. However, based on the board's experience, we find the condition factors of the land assessment for the Ialeggio Family Trust, Merrow and Merrick properties should be reduced by approximately 10% (the board has reduced the condition factor on all three properties by .30). This adjustment results in the following revised assessments:

Ialeggio Family Trust	-	\$75,600
Merrow	-	\$92,300
Merrick Lot 41-2	-	\$76,400
Lot 51-2	-	\$31,700

If the legal status of the docks changes in subsequent years, the Town shall make good faith adjustments to the assessments as provided for by RSA 76:17-c and board rule TAX 203.05.

Further, the board orders an abatement relative to Lots 34 and 35 owned by Carol L. Brown and Eugene W. Giromini. The Town had assessed those properties based on the lots' configurations contained on the Town's tax map.

Those lots are incorrect on the tax map based on the Taxpayer's 1988 survey.

Instead of both lots being perpendicular to the Deer Cove Road, Lot 35 fronts entirely on Deer Cove Road and has access to the lake while Lot 34 is a rear lot accessed from Benson Road. Further, on the view the board noted the topography of Lot 35 is steep necessitating access to the cottages from Benson

Road and Lot 34. In the revised assessments, the board has reduced the

Page 8  
Ialeggio Family Trust, et al. v. Town of Ossipee  
Docket No.: 17041-96PT et al.

condition factors of both lots to recognize the steep topography and the interrelated access of both lots. The board finds the land portions of the

assessments to be calculated as follows:<sup>1</sup>

Lot 34 - Unit Price	-	\$8,260
Neighborhood Factor	-	2.00 <sup>2</sup>
Condition Factor	-	0.70
Land Assessment	-	\$11,600

---

<sup>1</sup> Based on the Taxpayers' plan, the board estimated the acreage of Lot 35 to be .45-acres and Lot 34 to be .47-acres. The board estimated the respective unit prices for these corrected areas by interpolating the Town's Land Pricing Zone 05 contained in Taxpayers' Ex. #1.

<sup>2</sup> The neighborhood and condition factors for Lot 34 are based on similar lots on Benson Road without water access. The condition factor was reduced - .10 for being encumbered by the driveway access to Lot 35.

Lot 35 - Unit Price - \$8,100  
Neighborhood Factor - 2.25  
Condition Factor - 3.00  
Land Assessment - \$54,700 (rounded)  
Revised Total Assessment - \$127,200

If the taxes have been paid for the tax year 1996, the amount paid on the values in excess of: Ialeggio Family Trust - \$75,600; Merrow \$92,300; Merrick \$76,400 on Lot 41-2 and \$31,700 on Lot 51-2; and Brown \$11,600 on Lot 34 and \$127,600 on Lot 35, 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 overpayments 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.

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

Page 9  
Ialeggio Family Trust, et al. v. Town of Ossipee  
Docket No.: 17041-96PT et al.

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 Joan Picard, Agent for Ialeggio Family Trust, Taxpayer; Barbara Merrick, Agent for Clayton M. Merrick, Taxpayer; Carol L. Brown and Eugene W. Giromini, Taxpayers; Gail E. Merrow Currier, Taxpayer; Joan C. Picard, Taxpayer; and Chairman, Selectmen of Ossipee.

Date: December 24, 1998

---

Valerie B. Lanigan, Clerk

Ialeggio Family Trust v. Town of Ossipee  
Docket No.: 17041-96PT

Clayton M. Merrick v. Town of Ossipee  
Docket No.: 17042-96PT

Carol L. Brown v. Town of Ossipee  
Docket No.: 17043-96PT

Gail E. Merrow v. Town of Ossipee  
Docket No.: 17044-96PT

Joan C. Picard v. Town of Ossipee  
Docket No.: 17045-96PT

ORDER

This order responds to the Taxpayers' June 1, 1998 Motion to Consolidate the above-captioned appeals for hearing.

"Motion granted."

Each side will be given a reasonable amount of time to present their case. The twenty (20) minute time allotment for each side, as cited in the hearing notice, will not be strictly adhered to.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Valerie B. Lanigan, Clerk

CERTIFICATION

I hereby certify that the within Order has this date been mailed, postage prepaid to Joan Picard, Representative for Ialeggio Family Trust, Taxpayer; Barbara Merrick, Representative for Clayton Merrick, Taxpayer; Carol Brown and Eugene Giromini, Taxpayers; Gail Merrow, Taxpayer; Joan Picard, Taxpayer; and Chairman, Board of Selectmen of Ossipee.

Date:

\_\_\_\_\_  
Valerie B. Lanigan, Clerk

Ialeggio Family Trust, Docket No. 17041-96PT  
Clayton M. Merrick, Docket No. 17042-96PT  
Carol L. Brown, Docket No. 17043-96PT  
Gail E. Merrow, Docket No. 17044-96PT  
Joan C. Picard, Docket No. 17045-96PT

v.

Town of Ossipee

ORDER

A consolidated hearing was held in the five above-captioned cases on June 23, 1998. During the hearing concerns were raised as to the correctness and consistency of the "Town's" assessment methodology that the Town's representative, Mr. Joseph Lessard, indicated would require more review than has been done to date.

Consequently, the board orders the Town to review the assessment methodology used on the appealed properties, analyze any comparable market data and file a report with the board (copying the "Taxpayers") by August 31, 1998 describing any recommended changes or why none are necessary. The Taxpayers shall have until September 11, 1998 to file any comments with the board (copying the Town) relative to the Town's report. The board will then conclude deliberations and issue the decisions.

The board is taking this less than ordinary approach because it has

concerns, based on the testimony, that the assessments in the Deer Cove area may not have been consistently performed. While on appeal, the Taxpayers have the burden of proof to show the value of their property exceeds market value; however, the Town has a preexisting obligation to assess property proportionately. Appeal of Nashua, 138 N.H. 261, 266 (1994); RSA 75:1. This review will ensure the Town has initially done its assessment duty.

Page 2

Ialeggio Family Trust, et al. v. Town of Ossipee

Docket No.: 17041-96PT et al.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Paul B. Franklin, Chairman

---

Michele E. LeBrun, Member

**Certification**

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Joan C. Picard, Taxpayer and representative for the Ialeggio Family Trust; Barbara Merrick, representative for Clayton M. Merrick; Carol L. Brown and Eugene Giromini, Taxpayers; Gail Merrow Currier, Taxpayer; Joseph Lessard, representative for the Town; and Chairman, Selectmen of Ossipee.

Date: July 1, 1998

---

Valerie B. Lanigan, Clerk

0006

Ialeggio Family Trust, Docket No. 17041-96PT  
Clayton M. Merrick, Docket No. 17042-96PT  
Carol L. Brown, Docket No. 17043-96PT  
Gail E. Merrow, Docket No. 17044-96PT  
Joan C. Picard, Docket No. 17045-96PT

v.

Town of Ossipee

ORDER

The board's July 1, 1998 order gave the "Town" until August 31, 1998 to review the assessment methodology, analyze comparable market data and file a report with the board describing any changes necessary. The Town, in its August 27, 1998 letter (copy attached), requested a two week extension to that deadline due to "personal hardships experienced within the Town office." The board grants the Town's request and extends the Town's deadline until September 15, 1998. Further, the "Taxpayers'" previous deadline of September 11, 1998 to respond to the Town's report is extended until September 25, 1998.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Paul B. Franklin, Chairman

---

Michele E. LeBrun, Member

Page 2

Ialeggio Family Trust, et al. v. Town of Ossipee  
Docket No.: 17041-96PT et al.

**Certification**

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Joan C. Picard, Taxpayer and representative for the Ialeggio Family Trust; Barbara Merrick, representative for Clayton M. Merrick; Carol L. Brown and Eugene Giromini, Taxpayers; Gail Merrow Currier, Taxpayer; Joseph Lessard, representative for the Town; and Chairman, Selectmen of Ossipee.

Date: September 8, 1998

---

Valerie B. Lanigan, Clerk

0006