

John J. McSweeney, Jr.

v.

Town of Moultonborough

Docket No.: 17050-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 revised assessment of \$427,300 (land \$312,500; buildings \$114,800) on a .80-acre lot with a single-family home (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 does not have the advantage of being on a "point" because it has limited views, heavy boat traffic and rough water due to minimal protection afforded by the two deteriorating breakwaters;

- (2) a 5% reduction for the lot's size applied to the original assessment was removed when the Town subsequently reduced the "point" factor from 2.00 to 1.25;
- (3) pairing of sales of lots 17-42 and 17-79 show no "point" influence;
- (4) the actual area of the frontage that is usable is significantly reduced by large rocks and trees.

The Town argued the revised assessment was proper because:

- (1) an analysis of waterfront sales at the time of the reassessment indicated ten different waterfront value "neighborhoods" and that locations on "points" or "peninsulas" were valued higher in the market;
- (2) overall and stratified assessment-to-sales ratio studies subsequent to the reassessment indicate very acceptable assessment equity as the result of the analysis and assumptions made during the reassessment;
- (3) the land assessment has been reduced by adjusting the "point" factor from 2.00 to 1.25 to recognize the Property does not have the expansive views and privacy that properties on a more acute "point" have; and
- (4) the revision of the factor to 1.25 relates consistently with adjustments made to adjoining properties.

After the hearing, the board instructed its review appraiser to review the file, inspect the properties and submit a report. The parties should note that the review appraiser's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the review appraiser's

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recommendations. In this case, the board does not find the review appraiser's report to be conclusive evidence, but has considered it as one part of the evidence the board reviewed in making its determination.

Board's Rulings

Based on the evidence, the board finds the correct assessment for the Property should be \$411,700 based on a land assessment of \$296,900 and an assessment of \$114,800 for the improvements. While this assessment approximates the conclusion arrived at by the review appraiser, the parties should treat this as a coincidental occurrence, rather than the board adopting the review appraiser's value conclusion. The board finds some of the adjustments by the review appraiser were quite substantial and were partially based on subjective opinion, therefore, the board treated the report as one piece of evidence rather than as conclusive evidence.

The primary issue in this case was the effect of the Property's location near or on the end of a "point." It was the Town's position that the Property's location near the end of a "point," or in this case, on the end of a "peninsula", enhanced its value. The board concurs with the Town that the location of the Property does afford it some amenities that are not associated with typical waterfront properties. Its location on the end of the "peninsula" would reduce the amount of traffic going by it and the fact that there is no lot immediately behind it that does not have water frontage reduces any pedestrian traffic that may be in the area. The board, however, does find that the Taxpayer's comments concerning the amount of boat traffic and the quality of the water frontage warrants a 5% adjustment under "other adjustments" on the assessment-record card, and the new assessed land value would be calculated as follows: $\$250,000 \times 1.25 \times .95 = \$296,875$

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rounded to \$296,900. To this figure would be added the \$114,800 figure for the assessed value of the improvements to yield a total assessment of \$411,700.

The Taxpayer asserted that the "point" factor should not be applied at all to the Property and that the appropriate total assessment would be \$352,300 based on a land assessment of \$237,500 ($\$250,000 \times .95$) plus the improvements assessment of \$114,800. The board finds that assessment would not accurately reflect the value of the Property given its location on the end of

the “peninsula” and that the Town appropriately adjusted the land value to equitably represent the Property’s land assessment when compared to that of other, more typical waterfront properties.

If the taxes have been paid, the amount paid on the value in excess of \$411,700 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.

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

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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 John J. McSweeney, Jr., Taxpayer; Mary E. Pinkham-Langer, Agent for the Town of Moultonborough; and Chairman, Selectmen of Moultonborough.

Date: May 27, 1999_____

Lynn M. Wheeler, Clerk

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ORDER

This order responds to the "Taxpayer's" June 25, 1999 request for rehearing which the board denies.

The Taxpayer raised several points relative to the parties arguments summarized in the May 27, 1999 decision. The listed arguments are meant to summarize the parties main arguments and are not intended to be an exhaustive recitation of all the points raised during the hearing. The points raised by the Taxpayer in his request are part of the record and were considered by the board during its deliberations. Further, the Taxpayer's comments on the board's ruling do not raise any facts the board either overlooked or misapprehended warranting a rehearing. TAX 201.37(d).

Any appeal to the supreme court by the Taxpayer of this order must be in accordance with RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to John J. McSweeney, Jr., Taxpayer; Mary E. Pinkham-Langer, Agent for the Town of Moultonborough; and Chairman, Selectmen of Moultonborough.

Dated: July 9, 1999

Lynn M. Wheeler, Clerk

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