

Charles and Bonnie Caserta

v.

Town of Moultonborough

Docket No.: 17051-96PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$445,300 (land \$375,000; buildings \$70,300) on a .50-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) a June 1997 realtor's market analysis indicated a market value range of \$355,000 to \$365,000; an August 1998 appraisal estimated a market value of \$303,000;
- (2) the Property is not on a "point" and does not have an expansive view;

- (3) the Property has northerly winds which make boating difficult especially prior to mid-June;
and
- (4) the water is often less than 2 feet deep causing a boat motor to drag the bottom.

The Town recommended revising the "point" factor from 1.5 to 1.25 resulting in a revised assessment of \$382,800 (land 312,500; buildings \$70,300). 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 location 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) comparable #3 of the 1998 appraisal is in an inferior location than the Property; and
- (4) the revision keeps the assessment consistent with 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 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.

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Board's Rulings

Based on the evidence, the board finds the correct assessment for the Property to be \$351,600 based on a land assessment of \$281,300 and an assessment of \$70,300 for the

improvements. The board reviewed its review appraiser's report but did not give its value conclusion much weight. The board finds that some of the adjustments by the review appraiser were substantial and 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 a point. It was the Town's position that the Property's location near the end of a point enhanced its value. The review appraiser, on the other hand, addressed the Property's value using a calculation involving the amount of water frontage. The board finds that both of these factors are an influence on value. Frequently, properties located on or near the end of points have an amount of privacy and exclusivity as well as potential views that are not available to typical water frontage lots. However, it would be inaccurate to say this was solely due to the point location versus the amount of water frontage, as the amount of frontage may give some of the same benefits. The board considers both the water frontage and the location on or near the end of a point to be important factors that may affect a property's value.

This is a difficult property to value with absolute certainty because of the several offsetting factors affecting its value. The Property's general location near the end of a "point" does provide some privacy and exclusive access but certainly not as much as other properties.

Being in a cove provides some additional protection but also restricts the views that better

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positioned lots on points have. Also, the shallow water level does limit the size of boats that can approach the Property. The board also considered the Taxpayers' argument that a similarly situated lot (map 18, lot 68, Wamboldt) did not receive an enhanced condition factor. The board also considered the market analysis and appraisal submitted by the Taxpayers. On balance, the board concludes a condition factor of 1.25 tempered by an additional factor of .90 for the shallow water and cove location is appropriate. This adjustment results in a land value of

\$281,300.

The Town testified that the overall and stratified assessment-to-sales ratio studies performed after the revaluation indicated very acceptable assessment equity for waterfront properties. However, a review on a property-specific basis is necessary when an abatement request is received to confirm that individual assessments are as accurate as possible. The statute makes the proceeding for the abatement of a tax a summary one, free from technical and formal obstructions. The question is, does justice require an abatement? . . . The justice to be administered is to be sufficiently exact for the practical purposes of the legislature, who did not intend to invite the parties to a struggle for costs, or a ruinous contention about trifles. The points to be considered are such as the nature of each particular case presents. They cannot be fixed by an invariable rule. Manchester Mills v. Manchester, 58 N.H. 38, 39.

While a model may be appropriate in the mass appraisal process; adjustments may be required during an individual property review. The board finds there is insufficient evidence to show that the Property has an enhanced value due to its location.

In conclusion, the board finds this revised assessment comports with the various evidence submitted and the factors affecting market value.

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If the taxes have been paid, the amount paid on the value in excess of \$351,600 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 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.

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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 Charles and Bonnie Caserta, Taxpayers; 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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