

Dana L. and Donna Jean Clement

v.

Town of Meredith

Docket No.: 17055-96PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$140,500 (land \$72,600; buildings \$67,900) on a 33,400 square-foot lot on Bear Island 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) the Property was on the market for several years and was listed at \$132,000, selling in October 1997 for \$115,000;

- (2) the Property was not complete and required approximately \$5,000 of work;
- (3) a sales analysis indicated a \$121,409 value for the Property; and
- (4) the Property is located in a shallow cove, which has a significant adverse impact on the Property's value.

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The Town argued the assessment was proper because:

- (1) the Town had done extensive work on island properties during the 1989 revaluation and used this experience in the 1996 updated assessment;
- (2) the assessment was adjusted for the shallow cove, but the cove also provides some benefits such as protection;
- (3) the Property is not just a camp, like most of the comparables, but it is a newer and larger house;
- (4) in the summer of 1996, the Property was listed for \$159,000;
- (5) the Property's sale occurred after the assessment date, one sale does not make a market, and given the sales prices of inferior homes, the Property's sales price seems low; and
- (6) the assessment was adjusted for the \$5,000 of work needed on the house.

In response to the Town's argument, the Taxpayers also stated that the Property was on the market when the comparables were on the market, and the purchasers of the comparables chose the smaller camps instead.

The board's review appraiser, reviewed the property-assessment card, reviewed the parties' briefs and filed a report with the board. In this case, the review appraiser only reviewed the file; he did not perform an on-site

inspection. This report concluded the proper assessment should be \$126,000. Note: 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 recommendation.

After reviewing the board inspector's report, the Town stated the Property's fair market value should be \$132,300 based on some adjustments to Mr. Bartlett's report.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$129,600, which equates to a market value finding of \$128,300.

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The board adopted Mr. Bartlett's report with one of the adjustments recommended by the Town, namely a change in the depreciation deduction. Using 1% depreciation instead of Mr. Bartlett's 5% depreciation results in the \$128,300 market value finding, which then must be multiplied by the 1.01 equalization ratio.

As this case certainly makes clear, arriving at market value is not a science but rather requires informed judgement. The board was presented with three separate analyses --- Taxpayer \$121,400; Town \$132,300 (based on adjustments to Mr. Bartlett's report); and Mr. Bartlett \$126,000. The board examined each analysis, and more importantly, examined each of the sales to initially arrive at an appropriate range for this Property (\$125,000 to \$130,000). Then the board reviewed the information more specifically,

concluding that Mr. Bartlett's report with the depreciation adjustment recommended by the Town presented the best market indicator.

The board did not accept the Taxpayers' \$121,400 value because the analysis presented initially by the Town and then confirmed by Mr. Bartlett demonstrated that the Property was worth at least \$125,000 to \$130,000. Additionally, as noted by Mr. Bartlett, the Taxpayers' appraiser had significantly high gross adjustments to the comparables. Each time an adjustment is made there is room for error. We also note that no adjustment was warranted for the so-called "silent easement."

Concerning the \$115,000 sale of the Property, the board finds that the sale was probably for less than market value. Even the Taxpayers' \$121,400 appraisal confirmed this. Moreover, a review of the Town's sales, including a review of the photographs and the location of those sales, demonstrated that \$115,000 seemed below the market value of the Property. Nonetheless, the fact that the Property was on the market for several years (with various listing prices) and then sold for \$115,000 provides further evidence that the original assessment was excessive.

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If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$129,600 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. 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Kathleen Collins, Agent for Dana L. and Donna Jean Clement, Taxpayers; and Chairman, Selectmen of Meredith.

Date: September 8, 1998

Valerie B. Lanigan, Clerk

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