

Barbara A. Bielagus

v.

Town of Moultonborough

Docket No.: 17080-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$170,300 (land \$45,000; buildings \$125,300) on a condominium unit in Jonathan's Landing (the Property). The Taxpayer also owns, but did not appeal, another property in the Town with a \$20,000 assessment. 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 site value was excessive compared to other units at Jonathan's

Landing;

- (2) three 1996 sales do not indicate any added value for air conditioning;
- (3) the assessed value was not supported by the sales evidence; and
- (4) the assessment should be \$151,300.

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The Town argued the assessment was proper because:

- (1) the subject is one of 19 units with the same \$45,000 site assessment, and four units were assigned a \$35,000 site assessment because their locations were not as desirable;
- (2) four sales during the 1996 revaluation in Jonathan's Landing were used to arrive at the values of all of the units;
- (3) the charge for air conditioning was built into the costing system, and this method has been applied uniformly to any property in the Town with air conditioning; and
- (4) the sales subsequent to April 1, 1996, supported the assessed values used by the Town.

The board's review appraiser inspected the Property, reviewed the property-assessment card, reviewed the parties' briefs and filed a report with the board. This report concluded the proper market value should be \$156,000.

After receiving the parties' response to Mr. Bartlett's report, the board asked Mr. Bartlett to prepare a short memorandum on one point. A copy of this memorandum is attached, but the board, given Mr. Bartlett's comments, did not place any weight on that memorandum.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$157,560, which is based on Mr. Bartlett's \$156,000 market value multiplied by the 1.01 equalization ratio.

The crux of the parties' disagreement was over the air conditioning and over the use of two sales (unit 25 in December 1993 for \$200,000 with a dock and unit 17 in July 1994 for \$200,000 with a dock). These sales were part of the sales analysis used by the Town in arriving at the assessment that is under appeal.

Turning first to the air conditioning, the board finds the Town's air conditioning assessment is excessive. We make this conclusion based on the

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Taxpayer's information concerning actual cost of installing air conditioning and based on the information in Mr. Bartlett's report on air conditioning.

Concerning what sales should be used in this appeal, the board finds the Town was justified in using the 1993 and 1994 sales in performing the revaluation, but this does not mean that those sales bind the board in 1996 when more recent sales are available. RSA 75:1 requires that assessments be based on market value, but the market is not stagnant. Therefore, RSA 75:8 requires the yearly review of assessments because the market does change.

Given the three 1996 sales of similar units with similar locations, the board concludes that those sales are better evidence than the earlier sales. These three sales are summarized as follows.

Unit	Sale Date	Sale Price	Bartlett's Adjusted Price
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15	May 1996	\$145,000 (no dock)	\$156,000
11	May 1996	\$172,500 (with dock)	\$163,500
19	September 1996	\$143,700 (no dock)	\$154,700

Mean of adjusted prices \$158,000
Median of adjusted prices \$156,000

Based on the above sales and Mr. Bartlett's analysis, the board finds \$156,000 to be an appropriate market value for the Property.

The board finds that Mr. Bartlett's report is the best evidence of the Property's value. This finding in no way disparages the Town's revaluation efforts but merely is the board acting in accordance with the valuation requirements of the statutes and the caselaw.

If the taxes have been paid for the tax year \$157,560, the amount paid on the value in excess of 1996 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

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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

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Justin S. Bielagus, Agent for Barbara A. Bielagus, Taxpayer; Mary E. Pinkham-Langer, Agent for the Town of Moultonborough; and Chairman, Selectmen of Moultonborough.

Date: March 12, 1999

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Taxpayer's" July 27, 1999 request for assistance in implementing the board's March 12, 1999 final decision, which is granted. The board orders the "Town" to abate the assessment to the board's ordered assessment of \$157,600 as stated in the decision for the first half 1999 tax bill.

RSA 76:15-a, I states: "[a] partial payment of the taxes assessed on April 1 in any tax year shall be computed by taking the prior year's assessed valuation times $\frac{1}{2}$ of the previous year's tax rate" Further, RSA 76:15-a, II requires selectmen submit a warrant to the tax collector by May 15. Based on these timelines, the Town had more than adequate time from the March 12, 1999 decision to revise the prior year's assessed value.

The Town shall provide written proof, (with a copy to the Taxpayer) within 20 days of the clerk's date below, that this order has been complied with.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify that copies of the foregoing order have this date been mailed, postage prepaid, to Justin S. Bielagus, Agent for the Taxpayer; Barbara A. Bielagus, Taxpayer; Mary E. Pinkham-Langer, Agent for the Town of Moultonborough; and Chairman, Selectmen of Moultonborough.

Date: March 12, 1999 _____

Lynn M. Wheeler, Clerk