

**Victor L. and Ardelia H. Hamke**

**v.**

**Town of Moultonborough**

**Docket No.: 17231-96PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$423,900 (land \$312,500; buildings \$111,400) on a .90-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) the land portion of the Property's assessment was increased by a 1.25 factor for being on a point when it is not;
- (2) four neighboring properties have a land factor of only 1.00;

- (3) waterfront lots are advertised and sold based more on their frontage and area as opposed to point location;
- (4) other lots with more frontage and area are assessed for less because of the point factor on the Property; and
- (5) the Property has only 150 feet of frontage because 50 feet had been sold to adjoining lot 61, yet lot 61 which has 250 feet of frontage and 1.3 acres is assessed for less.

The Town argued the 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; and
- (3) the Taxpayers have not carried their burden because no evidence was submitted as to the value of the entire Property (land and buildings).

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.

### **Board's Rulings**

Based on the evidence, the board finds the correct assessment for the Property should be \$361,400, based on a land assessment of \$250,000 and an assessment of \$111,400 for the improvements. While this assessment approximates the conclusion arrived at by the review appraiser, the parties should understand that this was 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 partially based on subjective opinion, therefore, the board considered but did not rely on the review appraiser's report.

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 land value using a calculation involving the amount of water frontage. The board finds both of these factors may have an influence on value. Frequently, properties located on or near the end of points have an amount of privacy and exclusivity as well as potentially enhanced views that are not available to typical waterfront lots. However, it would be inaccurate to say that 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.

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In this case, the Property, while near the end of a point, does not benefit from an enhanced view, increased privacy or exclusive access due to its location. The fact that the Property has 150 feet of water frontage does not afford it unusual privacy as there is not a greater-than-average buffer between the abutting properties. The board does not see an enhanced value for the Property when compared to the abutting property at map 18, lot 61. This

abutting property has more area and more water frontage and essentially the same view as the Property, yet its land was assessed significantly less. Therefore, the board finds the appropriate location factor to adjust the land value by is 1.0 rather than 1.25. Making the adjustment from 1.25 to 1.0 yields the land value of \$250,000.

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 the Property has an enhanced value due to its location.

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If the taxes have been paid, the amount paid on the value in excess of \$361,400 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

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Victor L. and Ardelia H. Hamke, 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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